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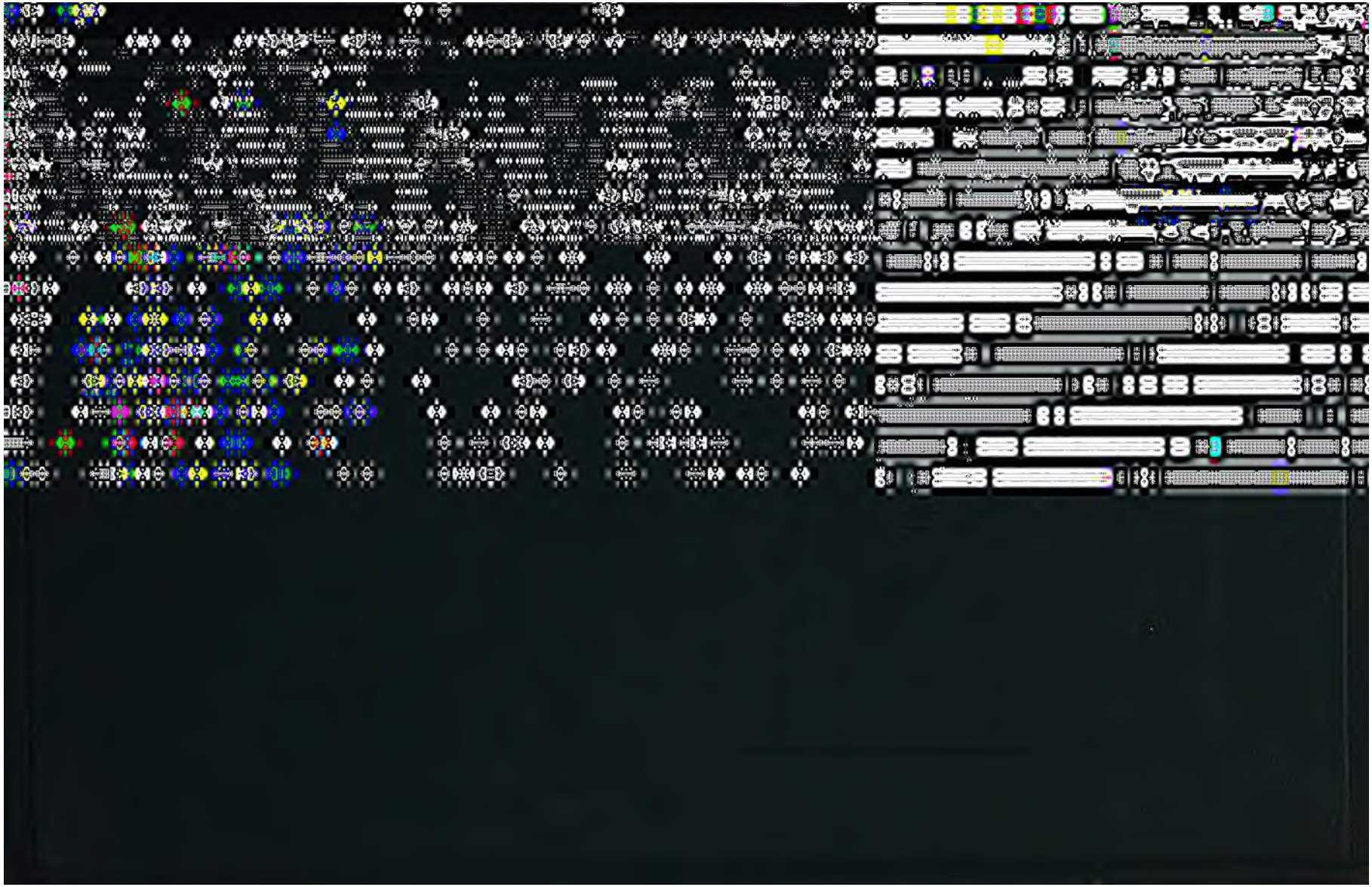

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MANUAL

OF

THE EDUCATION ACTS

35 & 36 VICTORIA, CHAP. 62 (1872).

An Act to amend and extend the provisions of the Law of Scotland on the subject of Education.—[6*th August* 1872.]

41 & 42 VICTORIA, CHAP. 78 (1878).

An Act to further amend the provisions of the Law of Scotland on the subject of Education, and for other purposes connected therewith.—[16*th August* 1878.]

MANUAL

OF

THE EDUCATION ACTS

FOR

SCOTLAND

BY

ALEXANDER CRAIG SELLAR

ADVOCATE

LATE LEGAL SECRETARY TO THE LORD ADVOCATE
OF SCOTLAND

SEVENTH EDITION

REVISED AND ENLARGED

WILLIAM BLACKWOOD AND SONS
EDINBURGH AND LONDON
MDCCCLXXIX

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INTRODUCTION.

THE Bill "to amend and extend the provisions of the Law of Scotland on the subject of Education" was introduced into the House of Commons by the Lord Advocate on the 12th of February 1872; read a second time on the 7th of March; considered during nine days in Committee and on Report; and passed the Lower House on the 27th of June. It was read a second time in the House of Lords, on the motion of the Duke of Argyll, on the 5th of July; passed through Committee on the 12th; and after being again amended in the House of Commons, it received the Royal assent on the 6th of August.

This Act is the conclusion of a series of efforts which have been made by Liberal Governments during a period of eighteen years to establish a system of National Education in Scotland. Five bills were introduced into Parliament on the subject between 1854 and 1870, and only one of them, the Act of 1861 (repealed by this Act), was carried. In 1870 the Elementary Education Act for England and Wales was passed, and in the following year a Bill for Scotland was introduced, being the sixth in the series. That Bill commanded much popularity in Scotland, and might have passed into law. But the work of the session was unusually heavy, and, owing to the lengthened debates on the Regulation of the Forces Bill and the Ballot Bill, no time was found for it. The Act of this year (1872) is in

its main features a reproduction of that Bill, the only material differences between them being the provisions regarding higher class public schools, and those regarding compulsory attendance. In both these matters the Scotch Statute differs from the English. The English Statute deals with elementary education alone; by the Scotch Statute the framework of a graded system of public education is laid down in an Act of Parliament comprehending infant, elementary, and higher class public schools. In Scotland, education is made compulsory and universal by the direct agency of statute law in both town and country; in England, it is left to the discretion of school boards appointed in localities to enforce education on the people or not.

The object of the Act is to amend and extend the provisions of the law of Scotland on the subject of education, in such manner that the means of procuring efficient education for their children may be furnished and made available to the whole people of Scotland. The principles upon which the Bill was framed are (in the Lord Advocate's words[1]): "First, that the imperial money voted by Parliament for promoting national education should be, in Scotland as it was in England, administered by the Government, and not by a statutory Board, which would not be responsible to the Government, and for whose proceedings, consequently, the Government could not be responsible to Parliament. Second, that a popularly elected school board should be forthwith established in every parish and burgh, and that the duties of each school board should be, first, to manage all rate-supported schools within the district; next, to provide such additional school accommodation as should be necessary in the district; and thirdly, to impose and levy such local school rates as should be necessary. Third, that there should be one uniform system of management, applicable without distinction to all public rate-supported schools, whether existing before the Act or established under the

[1] Lord Advocate in Committee, June 3.

Act to supply the ascertained deficiency. Fourth, that the religious teaching was to be given at such hours that it would not interrupt or interfere with the secular instruction, and that children were at liberty to withdraw from it without losing any part of the secular instruction." These were the leading principles of the Bill, and they are the leading principles of the Act. Effect is given to the first principle by the creation of a Scotch Education Department of the Privy Council, consisting of members of the Government, including the president and vice-president of the Council, and the Lord Advocate of the time, whose duty it is to determine the rates and conditions according to which Parliamentary grants may be given in Scotland, and to frame, and from time to time revise, the minutes containing these rates and conditions. The second principle is carried out by the sections providing for the establishment of school boards in every parish and burgh, and those specifying the duties and powers of the school boards. The third by those provisions which deal with the parochial and burgh schools existing at the passing of the Act, and with the establishment of new schools. And the words in the preamble, "whereas it has been the custom in the public schools of Scotland to give instruction in religion to children whose parents did not object to the instruction so given, but with liberty to parents, without forfeiting any of the other advantages of the schools, to elect that their children should not receive such instruction, and it is expedient that the managers of public schools shall be at liberty to continue the said custom," coupled with the Conscience Clause (§ 68), carry out the fourth principle. The Bill as introduced, and as it passed the Commons, did not contain these words, and the Conscience Clause was different. The House of Lords inserted the following as part of the preamble—viz.: "And whereas it has been the usage in Scotland, sanctioned by legislation, to make provision for religious instruction in public schools as an essential part of education, and it is desirable in extending the system of

education to afford means for continuing such religious instruction to all children whose parents do not decline it on conscientious grounds." But the House of Commons substituted the words in the Act for these words on the ground that they were accurate in point of fact, which the others, in so far as they differed from them, were not. It was not proposed in either House to insert any enacting clause in consequence of these words in the preamble; and the preamble was assented to because it was in harmony with the provisions in the Bill. There is no injunction to give instruction in religious subjects. The words in the preamble may be construed by the managers of public schools as an expression of what is clearly to be inferred from the enacting clauses—viz., that, subject to the restrictions therein expressly specified, they may make what arrangements they think proper with regard to religious teaching in the schools under their management. These restrictions relate to the time to be appointed for such teaching, and the liberty given to parents to elect that their children shall receive it or not as they—the parents—may see fit.

The Act may be regarded as divided into seven parts, dealing with :—

1. Constitution of school districts, (§§ 1, 8-11, 17).
2. Management, . . . (§§ 3-5, 8, 12-22, 48, 52, 57, 58, 67, 70).
3. Supply of school accommodation, (§§ 23-42).
4. Finance and Parliamentary grant, (§§ 43-53, 67, 70, 78).
5. Teachers, ... (§§ 54-61, 76-78).
6. Higher class schools, . . (§§ 62-64).
7. Miscellaneous provisions, . (§§ 65-80)—
   e.g., inspection (§ 66); conscience clause (§ 68); compulsory attendance (§§ 69-73); repeal of Acts (§ 78).

In the following Summary of the provisions of the Act, it is proposed to adopt this division, and to explain, where it may be thought necessary, the provisions relating to the several parts.

INTRODUCTION TO THE SEVENTH EDITION.

THE Seventh Edition of the Manual of the Education Act for Scotland contains (in addition to the matter comprised in the earlier editions, which has been carefully revised) a summary of the Education (Scotland) Act, 1878, the text of that Act, with notes and references, and the Decisions in the Court of Session and the Sheriff Courts, bearing on the principal Act, together with the Opinions of Counsel, which have been published from time to time.

The Act of 1878 has for its main purpose the introduction of provisions which have, in principle, been adopted in England regarding the employment of children. Under the law, as it now stands, no child under ten years of age can be employed for gain in any employment whatever; no child between ten and fourteen can be employed during school hours; and no child under fourteen can be employed in any "casual" employment after 7 o'clock at night in winter and after 9 o'clock at night in summer.

These provisions, which appear to err on the side of stringency, are qualified by the following exemptions. They do not apply if there is no inspected school within three miles of the child's residence; nor, in the case of a child over ten years of age, if he can produce a certificate of ability to read and write and of a knowledge of elementary arithmetic, granted by one of Her Majesty's Inspectors of Schools. They do not apply to

children who are attending school under the Factory and Workshops and Mines Regulations Acts; nor if it can be proved that the employment was during the holidays, or during hours (not being hours when casual employment is prohibited) when the school was not open. Special exemptions also may be permitted by school boards in individual cases, and at certain seasons of the year, for periods not exceeding six weeks in the year.

Regulations are laid down in the Act for the enforcement of these enactments similar to those in the Act of 1872, with these differences, that proceedings may be taken before two justices of peace, sitting in open court, as well as before the Sheriff; and that they may be repeated against a parent after the lapse of one month instead of after the lapse of three months.

There are other alterations of minor importance relating to the employment of children, for which reference is made to the Act.

An important change has been introduced into the law with respect to the expenditure of public money on higher education. Hitherto the principle on which the Legislature have acted, both in Scotland and in England, has been to restrict the outlay of public money, whether in the shape of Parliamentary grant or local rates, to those schools in which education consists chiefly of elementary instruction in reading, writing, and arithmetic. By the Act of 1878, school boards having the management of any higher class public schools, and in which, consequently, the education given consists chiefly of instruction in Latin, Greek, modern languages, mathematics, natural science, and generally in the higher branches of knowledge, are bound to maintain the buildings of their schools out of the school fund. And they are empowered to pay from the school fund such other expenses for the promotion of efficient education in their schools as are not provided for by contribu-

tions from the common good of burghs, special endowments, and school fees. Expenditure under both heads must be sanctioned by the Department. It will be interesting to watch the development of this new principle of educational finance.

The other changes introduced into the law by the new Act are in matters of detail, to which it is unnecessary to make special allusion. They are noted in the summary of the Act of 1878, and also in the notes appended to the Act of 1872.

For Part V., which contains the Decisions in the Court of Session and in the Sheriff Courts, and the Opinions of Counsel bearing on the Act, I am indebted to Mr William C. Smith, Advocate, who has spared neither time nor trouble to make them as complete and as intelligible as possible.

My object in publishing the Decisions in this form is the same which I had in view when I prepared the Manual in 1872—namely, to interpret the Act in such a way as to make it clear to the minds of laymen who are not professionally acquainted with the technicalities of law.

I hope, with Mr Smith's valuable assistance, that I have succeeded in this object, and that this edition may be of practical use to members of school boards and others who are interested in the working of the Act, but who are not professional lawyers. I hope, also, that it may be as favourably received by the legal and the general public as the editions which have preceded it.

In the Appendix will be found two Acts relating exclusively to Scotland—the Free Church of Scotland Schools Properties Act, and the Endowed Institutions Act, which were passed last session. The first of these Acts authorises the Deacons' Courts in Free Church congregations, with the consent of the General Assembly, to appropriate Free Church school property to such educational uses in connection with their respective congregations as they think fit. The Act mentions

Sunday-schools, libraries, and lectures, as examples of such educational uses. This power of appropriation overrides any conditions of reversions or forfeiture contained in the property title. If, however, the Deacons' Court or the General Assembly think that the property has not been or cannot be beneficially appropriated to such educational purposes, the Deacons' Court may, with the same consent, but under certain conditions, sell or let either the whole or part of the property. In the event of a sale or lease, money advanced by the General Assembly for the purchase, erection, or furnishing of school property must be repaid, and must be applied by the General Assembly to educational purposes connected with the Free Church, such as pensions to retired teachers, normal schools, payment of college fees to normal school students, bursaries, the establishment or maintenance of schools. Money advanced by the Committee of Council on Education in the shape of building grants must be repaid to the Treasury, or the consent of the Home Secretary must be obtained to the sale or lease. No other subscriber or contributor is to have any interest in the proceeds or rents. Any balance in the hands of the Deacons' Court will be applied by them, with the sanction of the General Assembly, to the above purposes, or towards Sunday-schools, libraries, or school prizes. A special provision declares that the Act shall not interfere with the operation of sections 37, 38, and 39 of the Education Act of 1872.

The Endowed Institutions Act authorises the governing bodies of any endowed institution to petition the Home Secretary to grant a provisional order for the improvement of the government and administration of the institution, or for the better application of the endowments, or for the transference of the institution and its endowments. The Home Secretary may either direct the petition to be published in the 'Gazette,' with a view to further inquiry, or remit it to commissioners appointed under the Act for inquiry and report. On receiving the report, he may issue an order with or without modifications (provided

the modifications are not inconsistent with the principles of the petition), or he may refuse. If the proposed order contains any modifications, it must be sent to the governing body for objections and suggestions, and then he may remit to the commissioners for their report. The order must be laid before both Houses of Parliament for forty days, and, unless within that time a resolution has been adopted by one or other of the Houses disapproving of the order, it comes into operation. The governing bodies of two or more institutions may concur in applying for an order, under which their institutions may be united; and orders may be granted under which institutions and their endowments may be transferred to the governing bodies of other endowed institutions, or to school boards. The term "endowed institution" is subject to a liberal interpretation. It means a school, hospital, or other institution wholly or partly maintained by means of any endowment, and includes a mortification or bequest for educational or charitable uses, or for uses partly educational and partly charitable, or for the establishment or maintenance of a public library. And "endowment" means any description of property, heritable or moveable, which is dedicated to educational, literary, or charitable uses, or to uses partly educational and partly charitable, or for the establishment, management, and maintenance of a public library, in whomsoever such property may be vested, in whosesoever name it may be standing, or by whatsoever tenure or title it may be held. The Commissioners (whose names will be found in the Appendix, at page 328), in addition to the special duties under the Act, will be required to discharge the important duty formerly intrusted to the Board of Education, of submitting for the consideration of the Scotch Education Department the conditions according to which, in their opinion, the Parliamentary grant for public education in Scotland may be most advantageously distributed for the purpose of promoting education in the higher branches of knowledge in public and State-aided schools, especially in those districts in which there are no higher class

public schools. The Act commenced on the 1st of October 1878, and remains in force until the 31st of December 1880. But on special cause shown, it may be continued by the Queen in Council until the 31st of July 1881.

In the Appendix I have also printed those clauses of the Factory and Workshops Act, 1878, which have direct reference to the education and employment of children, and which apply to Scotland. These Acts and clauses I have thought it well to incorporate in this edition, because they bear upon those provisions of the Education Acts which relate to the transference of schools, to the maintenance of the higher class public schools, the preparation of the Scotch Code, and the employment of children. It may therefore be convenient to have them at hand when matters relating to these subjects come up for discussion at school board or other educational meetings. The clauses of the Lands Clauses Consolidation (Scotland) Act, 1845, and amending Acts, bearing upon the compulsory purchase of sites, are also incorporated in this edition.

I have to express my thanks to Sir Francis Sandford, C.B., Secretary to the Education Department, and to Mr Craik of that Department, for the trouble they have taken in providing me with circulars and other documents of the Department which they thought might be serviceable; and to Mr Smith for his able assistance in preparing the legal portion of the edition, and for the trouble he has taken in helping me to see the edition through the press.

I have further to thank Lord Young for valuable suggestions which he has given me from time to time; and also for his permission to publish a revised edition of the address which he delivered at the Social Science Association at Aberdeen in the autumn of 1877. This address, taken in connection with his judgment in the Glenshiel case (given at full length in the Decisions), forms a masterly exposition of both the law and the policy of the Act of 1872.

This is not the place to enter on a disquisition upon the benefits conferred upon the people of Scotland by that Act, but I may be allowed, in conclusion, to quote the following extract from the final report of the Board of Education touching on that point:—

"We cherish, however, the hope and belief, that when the defects in the existing law have been amended, the benefits resulting from the general diffusion of education in the schools established under the operation of the 'Education (Scotland) Act, 1872,' and which, so far, it has been our part to organise, will become so apparent as to reconcile to its provisions many of those who opposed that measure when it was before the Legislature, and who have not as yet cordially sympathised with the efforts made to secure its efficient administration. Persons of this class have thoughtlessly compared the trifling cost at which the fee-existing parochial schools were maintained, with the increased expense which has been necessarily incurred in providing a system of much greater magnitude, commensurate with the wants of the whole population."

I need not add that I heartily concur in the hope and belief which the Board in these words have expressed.

A. C. S.

ARDTORNISH HOUSE, MORVERN,
January 1, 1879.

PART I.

SUMMARY OF THE EDUCATION ACT, 1872

PART I.

SUMMARY.

I. CONSTITUTION OF SCHOOL DISTRICTS.[1]

Sections 1, 8, 9, 10, 11, 17.

EVERY parish and every burgh (subject to the exceptions mentioned below) is constituted a school district.

Within twelve months after the passing of the Act—*i.e.*, before the 6th of August 1873—a school board shall be elected for and in every school district in Scotland. Sect. 8.

Parish is defined to mean any parish which does not wholly consist of a burgh or part of a burgh, and to include any school district formed under the Act.[2] Sect. 1.

Burgh is defined to mean any royal burgh and any burgh or town returning, or contributing as a burgh to return, a member to Parliament, and to include eight towns specified in a schedule appended to the Act—viz., Girvan, Wick and Pulteneytown, Alloa, Kirkintilloch, Dalkeith, Broughty Ferry, Bathgate, and Kilsyth. These towns do not come within the definition of

[1] District is used here in a general sense. It has also a special sense under this Act—viz., the union of portions of two or more parishes detached from the main body of the parish and formed into a school district. Cf. Sect. 17.

[2] A *quoad sacra* parish made up of parts of two or more civil parishes is esteemed a parish for the purposes of the Act, and as such is entitled to have a separate school board. Cf. Sect. 10, p. 56, note.

burgh as given above, but they are sufficiently important and populous to be considered as school districts separate from the country parishes which surround them. Sect. 1.

Area of a Parish.

The area of a parish is exclusive of the area of any burgh or part of a burgh situated therein, for which a school board is required to be elected. Sect. 9.

This provision is modified by the Act of 1878. Sect. 29, cf. p. 132.

United Parishes.

Parishes or parts of parishes united *quoad omnia* or *quoad sacra* are deemed one parish. Sect. 10.

Small Parishes.

Small or thinly-populated parishes may be added to adjacent parishes by order of the Board of Education, and when so added shall be regarded as part of the parish to which they are added. Sect. 17.

School Districts.

School districts may be formed by two or more school boards detaching portions from their parishes and uniting them into districts.

Such districts are deemed parishes.

The consent of the sheriff of the county in which such parishes or any of them lie must be given to this arrangement. Sect. 17.

Small Burghs may be united with their Parishes.

A burgh with a population under 3000 may, by order of the Board of Education, be dealt with as part of the parish in which it, or the greater part of it, is situated. The order must be issued within *six months* after the passing of the Act—*i.e.*, before the 6th of February 1873. Sect 11.

Area of a Burgh.

The area of a burgh shall be taken to be the limits within

which the municipal (or if there are no municipal, the police) assessments are levied. Sect. 9.

This provision is modified by the Act of 1878. Sect. 29, 30, cf. p. 133.

Disputes as to the Area of School Districts.

Any question or dispute regarding the area of any parish or burgh shall be settled either

1. By the Board of Education;

or,

2. By the sheriff of the county in which the parish or burgh, or the greater part thereof, is situated, on an application by the school board authorised by the Board of Education.

The determination in either case shall be final. Sect. 9.

II. MANAGEMENT.

Sections 3, 4, 5, 8, 12-22, 48, 52, 57, 58, 67, 70.

Management vested in School Boards.

The management of the public schools[1] is vested in the school boards established in the different school districts.[2] Sect. 26.

Scotch Education Department.

In order to regulate the distribution of the Imperial money provided by Parliament for public education in Scotland, a Committee of the Privy Council on Education in Scotland is appointed by the Queen called the Scotch Education Department.[3]

[1] Public school is defined to mean any parish or burgh school or any school under the management of a school board.

[2] "The management of the schools was committed to the school boards in Scotland, and to no one else. Nothing whatever connected with the management of the schools in Scotland was committed to the Privy Council."—*Lord Advocate, June* 3, 1872.

[3] Scotch Education Department is defined to mean the Lords of any Committee of the Privy Council appointed by Her Majesty on Education in Scotland.

The first Committee were appointed on the 9th of August 1872.[1]

The principal duties of the Department during the existence of the Board of Education are—

1. To see to the distribution of the annual and building grants in Scotland. Sects. 5 and 67.
2. To frame the code of minutes in accordance with which those grants will henceforth be made. Sects. 5 and 67.
3. To regulate and conduct the examination of candidates for certificates of competency. Sects. 57, 58.

These duties were formerly performed for Scotland by the Committee of Council on Education, which, since the passing of the Elementary Education Act of 1870, have been called the Education Department.

The Scotch Education Department are constituted a different Committee from the Education Department, but both are in fact branches of the Government of the day. They are assisted by a permanent secretary in London (Sir Francis Sandford, C.B.), and a staff acting under him who carry on the regular work of the departments, and for whom the Government are responsible to Parliament.[2]

[1] The first Committee consisted of—

The Lord President of the Council (the Marquess of Ripon); the Vice-President of the Committee of Council on Education (Mr Forster); the First Lord of the Treasury (Mr Gladstone); the Chancellor of Exchequer (Mr Lowe); the Duke of Argyll; Mr Bruce; the Lord Advocate (Mr Young).

The Second Committee were appointed on the 17th of March 1874. They consisted of—

The Lord President of the Council (the Duke of Richmond); the Vice-President of the Committee of Council on Education (Viscount Sandon); the First Lord of the Treasury (Mr Disraeli); the Chancellor of the Exchequer (Sir Stafford Northcote); the Lord Advocate (Mr Gordon).

The present Committee were appointed on the 26th of March 1878. They consist of—

The Lord President of the Council (the Duke of Richmond); the First Lord of the Treasury (the Earl of Beaconsfield); the Vice-President of the Committee of Council on Education (Lord George Hamilton); Lord Gordon; the Chancellor of the Exchequer (Sir Stafford Northcote); the Lord Advocate (Mr Watson).

[2] A list of the officials connected with the Scotch Education Department will be found in the Appendix, p. 389.

The Scotch Education Department will in the following pages be called "The Department."

Board of Education.

In order to get the new system into working order and to bring the provisions of the Act into operation, the Department and the school boards are to be assisted by a temporary Board of Education in Scotland.

The Board are to hold office for three years,[1] and, if necessary, for two years more. They are responsible to the Department, and on the expiration of their original or extended term of office their powers and duties devolve upon the Department, and "thereafter the clauses and provisions of the Act in which the term 'Board of Education' occurs shall be construed as if the term 'Scotch Education Department' were substituted therefor." (Sect. 3, subsect. 6.)

The principal duties of the Board are—

1. To assist in the organisation of school districts and school boards.
2. To give advice and directions as to the institution and establishment of new schools, and to regulate the amount of school accommodation to be provided in each school district.
3. To submit to the Department the conditions according to which in their opinion Parliamentary grants should be distributed in Scotland. Sect. 5.

The members of the Board were appointed on the 10th of October 1872, viz.:—

Sir John Don Wauchope, Bart., Chairman.
[2]Sir William Stirling Maxwell, Bart.
[2]John Ramsay, Esq., M.P.
Sir Alexander Grant, Bart.
Rev. John Tulloch, D.D.
Rev. James Taylor, D.D., Secretary.

[1] "I have no doubt that the Board could accomplish their work in two years; and indeed I might say that my knowledge of the facilities already existing in Scotland leads me to believe that they will do it in less time."—*Mr W. E. Forster, 30th July* 1872.

[2] Without salary.

The chairman, two members, and the secretary, have salaries. Two members are a quorum. The office of the Board is in Edinburgh. The ordinary meetings will be held there every month except August and September. The chairman or some other member and the secretary will attend regularly at business hours during at least nine months in the year. The Board may appoint one or more of their number to perform special duties connected with the execution of the Act, and to visit such places as may be necessary for that purpose. Sect. 3.

The first meeting of the Board was held in Edinburgh on Friday the 18th of October 1872. Sect 4.

The Board of Education will in the following pages be called "The Board."

Board of Education.—The Board of Education was established with a view to greater efficiency and convenience in the institution and organisation of schools and school boards under the Act. It was provided that the Board should endure for three years, with power to extend the period, if necessary, to five years. At the expiration of that time, provision was made whereby the powers and duties of the Board should devolve upon the Department; and further, that the various clauses and provisions of the Act in which the term "Board of Education" occurred should be construed and have effect as if the term "Scotch Education Department" was substituted therefor.

In 1875 the period was extended for two years, and in 1877, by Act of Parliament, for one year more. In 1878, the extended periods having expired, the Board of Education ceased to exist, and the powers and duties devolved upon the Department.

In the Act, therefore, and in this summary, the term "Scotch Education Department" must be regarded as substituted for the term "Board of Education" wherever (except, of course, in the provisions for the establishment of the Board) the latter term occurs.

The duty of submitting to the Department the conditions according to which the grant should be distributed, has been transferred to the Commissioners appointed under the Endowed Institutions (Scotland) Act, 1878. Cf. Sect. 11, p. 328.

First Elections of School Boards.

The *first* election of school boards will be conducted in accordance with the following provisions.

Number of Members.

1. The number of members in each school board will be determined by the Board according to the requirements of the

school district. Each school board must consist of not less than five and not more than fifteen members.[1] Sect. 12, subsect. 1.

Candidates.

2. Any one, not being a teacher in a public or State-aided school, is eligible as a member of a school board.

No qualification as to age, sex, residence, or ownership is required for membership, and the same person may, if elected, be a member of two or more boards.[2]

Electors.

3. The electors consist of all persons[3] of lawful age whose names are entered on the latest valuation roll[4] *applicable to* the parish or burgh for which the school board is to be elected, as owners or occupiers of lands or heritages of the annual value of £4 and upwards, situated within the school district for which the school board are to be elected.[5] Sect. 12, subsect. 2.

Conduct of Elections.

4. The elections will be conducted in accordance with rules and directions which will be issued by the Board within *six months* of the passing of the Act, and published in the Edinburgh Gazette. Sect. 12, subsect. 5.

[1] Five and fifteen are the limits allowed by the English Act, the determination of the number resting with the Department. The following is the scale laid down by the Department with reference to the number of members of school boards in England:—

Population under	No of Members.
5,000	5
15,000	7
40,000	9
70,000	11
100,000	13
Over 100,000	15

A similar arrangement was made in Scotland.

[2] The jurisdiction conferred by the Act upon Sheriffs and Sheriff-substitutes renders it undesirable that they should act as members of school boards in their own counties.

[3] Females, if otherwise qualified, may vote as well as males.

[4] The valuation roll is made up each year on September 30th. Cf. as to valuation roll, p. 57, notes 3 and 4. It will be observed that the words "*applicable to* the parish, &c.," are used. There is no such thing as the "*valuation roll of a parish or burgh.*"

[5] It was proposed in the House of Commons that an elector should be disqualified if he were in arrears of either poor-rate or school-rate, but the amendment was not pressed.

Authorities to conduct Elections.

5. The old managers of the parish and burgh schools—viz., the qualified heritors and minister in each parish, and the town council in each burgh,[1] or if there is no town council the bodies specified in Schedule A of the Act, are constituted the authorities to initiate the first elections.

They are to meet as soon as conveniently may be after the publication by the Board of the rules in the Gazette, and are to fix a time and place for the elections in their parishes and burghs respectively, and to appoint returning officers.

They are to transmit written information to the Board that they have taken these preliminary steps.

If they fail in any parish or burgh to do so for *three months* after the publication of the rules, the Board will require the sheriff of the county to perform the duty. Sect. 12, subsects. 3 and 4.

Voting.

6. Each Voter is entitled to give as many votes as there are members to be elected, and he may distribute his votes as he pleases.[2]

E.g., If a school board are to consist of ten members, each voter has ten votes, and he may give ten votes for one candidate, or one vote for each up to the number of ten, or make any other distribution he pleases. Sect. 12.

Determination of Questions as to Elections.

7. Candidates having the majority of votes at any election are to be elected.

In case of equality, the returning officer decides which candidate is to be deemed elected.

Any question or dispute regarding the election of a candidate is to be determined summarily by the sheriff of the county, on the petition of any one having a legal right to raise such question. The sheriff's determination is final. Sect. 14.

[1] It will be observed that there is no provision for the election of members of school boards in burghs according to wards.

[2] This provision for cumulative voting has been adopted in England to protect minorities and give them a fair proportion of representation. It was not in the Bill as introduced, but was inserted on the motion of Sir Edward Colebrooke, and after a division in which only 86 members voted against it.

First Meeting of School Board.

8. The time and place of the first meeting of the school board (which must be within fourteen days of the election) will be announced, at the time of declaring the election, by the returning officer.[1]

Notice of election must be sent by him to each member of the school board, with a notice to attend the first meeting. Sect. 16.

Invalid Elections.

In case of an invalid election, the school board, if a quorum exist—*i.e.*, if there are three members duly elected,[2] will fill up the vacancy or vacancies.

If there is no quorum, or if the school board fail for three weeks to make the necessary appointments, the Board may order a new election of as many members as may be necessary to complete the number. Sect. 15.

Vacancies.

Vacancies in any school board elected either at the first or at subsequent elections will be supplied by the school board itself nominating a person to supply the vacancy.

This provision is modified by the Act of 1878. Sect. 15, cf. p. 129.

Every person so nominated will go out of office at the same date as the school board. Sect. 13.

Nomination of School Boards.

If any school district is without a school board at the end of one year from the passing of the Act (August 6, 1873), the Board will nominate a school board for it.

The Board will also fix the time and place of meeting, and the school board will be bound to meet accordingly. Sect. 20.

By means of these provisions a school board will be constituted in every parish and burgh in Scotland within twelve months of the passing of the Act.

[1] The Act does not expressly put this duty on the returning officer; but it clearly implies that he should discharge it.

[2] Sect. 21. Three members are a quorum.

These school boards will remain in office until a new election takes place.

Elections subsequent to the first.

Elections subsequent to the first will be conducted in much the same manner as the first election, the main difference being that the time for the elections will be fixed and the rules for the conduct of them issued by the Department and not by the Board.

This provision is modified by the Act of 1878. Sect. 26, and schedule, cf. pp. 132 and 136.

And the Department are to have regard to the circumstances and convenience of localities in fixing the time for these elections.[1] Sect. 13.

School boards will remain in office for three years. They will, in convenient time before the expiration of their period of office, take the necessary steps for the election of their successors. Sect. 13.

Failure to elect a School Board.

If any election should not take place in accordance with the Act, the Department may,—

1. Order an election.
2. Allow the existing school board to continue in office.
3. Nominate a school board for the parish or burgh in which the failure has occurred.

In the latter case, the nominated school board will continue in office for the same period as a school board elected under the Act at the time when the failure occurred, and they have all the powers, and are required to perform all the duties, of an elected school board. Sect. 13.

Power to alter School Districts.

1. The Board may order small or thinly-populated parishes to be added to adjacent parishes. Sect. 17.

[1] As the Bill passed the House of Commons, the time was fixed in the section dealing with subsequent elections; but the House of Lords, considering it might be inconvenient to fix by statute the same time for all localities, altered this. When the Bill returned to the House of Commons, the clause which now stands as part of the Act was introduced to give effect to the intention of the House of Lords.

2. The Board may order the election of a school board for any burgh or town for which a school board have *not* previously been elected.

The limits of the burgh or town thus formed into a new school district will be specified in the order. The school district will thereafter be esteemed a burgh for the purposes of the Act, and will cease to be included in the area of the parish in which it is situated. Sect. 18.

3. The Board may discontinue a school board in any burgh or town in which a school board have been established.

In this case the burghal school district will cease to have a separate existence from the parochial district, in which it will be incorporated. Sect. 19.

Time for making these Alterations.

Any order of the Board carrying these alterations into effect should be framed so as to come into operation at the next election of a school board for the locality. Sect. 19.

The powers under Sections 18 and 19 (numbered 2 and 3 in the preceding paragraph) cannot be put in force before the lapse of three years from the passing of the Act.

The object of these provisions is to enable the Board or the Department to adjust from time to time the educational machinery to the changing circumstances of localities. If a large mining population were to grow up in any village which formed part of a rural district, it might be expedient to set up both a parish and a burgh school board in that district, otherwise the rural part would be too heavily burdened.

On the other hand, if experience showed that the burgh population of a district were over-taxed, and that the residents in the rural part got too much advantage, in proportion to their share of taxation, of the schools provided by the burgh, the Board or the Department would discontinue the burgh school board, and have only one school board in the district.

Cf. the provisions contained in Sects. 29 and 30 of the Act of 1878, relating to the union of school boards and the extension of burgh areas, pp. 132, 133.

School Boards are bodies corporate.

The school boards having been duly elected, or otherwise constituted, they are declared to be bodies corporate, with perpetual succession and power to acquire and hold land for the purposes of the Act. Sect. 22.

Duties to be performed at first Meetings.

At their first meetings they will—

1. Appoint one of their number to be chairman during the school board's tenure of office.

The chairman has a deliberative, and, in cases of equality, a casting vote. Sect. 21.

2. Appoint a treasurer during pleasure, and with such remuneration as they see fit. Sect. 48.
3. Appoint a clerk or clerks, and other necessary officers, during pleasure, and with such remuneration as they see fit. Sect. 52.

Two School Boards may employ the same Officers.

Two or more school boards may employ the same treasurer or other officer. Sect. 52.

Officer to report as to defaulting Parents.

Every school board must appoint an officer to report to them what parents resident in their school district fail to provide elementary education for their children, in order that the school boards may put in force the provisions regarding compulsory education. Sect. 70.

Managers.

School boards may appoint managers[1] (not less than three in number) to manage the schools under their charge.

They may delegate to these managers all their powers except that of raising money. The managers may be removed by the school boards, or they may resign on giving written notice to the school boards. Sect. 22.

[1] The managers may be selected out of their own number, or not, as the school board think proper.
Two or more school boards may appoint the same managers.

Quorum.

Three members of a school board shall be a quorum. Sect. 21.

Managers.—By Sect. 21 of Act of 1878, no one who holds an office of profit under a school board is qualified to act as manager under the board.

Quorum.—By Sect. 17 of Act of 1878, the Department are authorised to supply a deficiency if there should cease to be a quorum in any school board.

Resignation.—By Sect. 15 of the Act of 1878, power of resignation is given to members of school board.

Disqualification for Non-attendance.—By Sect. 16 of Act of 1878, provision is made whereby absence for six months from all meetings of school board operates as a disqualification for membership.

III. SUPPLY OF SCHOOL ACCOMMODATION.

Sections 23-42.

Parish and Burgh Schools vested in School Boards.

All parish and burgh schools are vested in the school board of the parish or burgh in which they exist. Sects. 24, 25.

Parish School.

Parish school[1] includes by its definition the following schools:—

1. Parochial, in landward parishes.
2. Side, . . established under 43 Geo. III. c. 54.
3. Parliamentary, established under 1 & 2 Vict. c. 87.
4. Heritors' girls' schools, „ „ 24 & 25 Vict. c. 107, sect. 5.
5. Schools established by or transferred to a parish school board.

Every school, with the teacher's house and land, belonging to

[1] Parish school shall include any school established under the recited Acts, or any of them, and any school established under this Act by the school board of a parish, or which is by this Act vested in and placed under the management of the school board of a parish. Sect. 1.

the first four classes, if situated in a landward parish, is vested *ipso facto* in the school board of the parish.

If situated in a burghal parish—in the school board of the burgh.

If situated in a parish partly landward and partly burghal, and being the parish school of the landward part—in the school board of that part.

The school boards supersede and come in place of the old managers—viz., the qualified heritors, and the minister. All the powers, obligations, and duties of the old managers in regard to these schools are transferred to the school boards.

All ecclesiastical superintendence over public schools is abolished, and all connection between the public schools and the Church severed. Sect. 23.

Burgh Schools.

Burgh school[1] by its definition includes every public school situated in a burgh.

These schools are vested *ipso facto* in the school boards of the burgh, and the school boards supersede and come in place of the old managers—viz., the town council and magistrates, or other authorities, in whom the school management was vested. Sect. 24.

Public Schools.

Every school under the management of the school board of a parish is a Parish school, and every school under the school board of a burgh is a Burgh school.

All such schools are declared to be Public schools. The rights of any teacher of a parish school which may by the Act become a burgh school, and of his successors, to participate in any bequest[2] for the behoof of teachers in parochial schools,

[1] Burgh school shall include any school to which that term is now legally applicable, although it may be called an academy, or a high school, or a grammar school, or any other name, and any school established in a burgh by the school board thereof, or which is by this Act vested in and placed under the management of the school board of a burgh. Sect. 1.

[2] This provision was inserted in the House of Lords in the interests of those schoolmasters in Aberdeen, Banff, and Moray who participate in the Dick Bequest. By the terms of that bequest the trustees are bound to allow only parochial

will not be prejudiced, nor will the powers of the trustees of such bequest. Sect. 25.

All public schools, whether existing at the passing of the Act or subsequently supplied, are vested in and placed under the management of the school boards of their respective districts. Sect. 26.

School Boards to make an Educational Census in their respective School Districts.

Every school board must provide efficient education for all persons resident in their parish or burgh, and a sufficient amount of accommodation in public schools *available* for all for whom efficient education is not otherwise provided.[1] Sect. 26.

The first duty, therefore, of every school board is to ascertain and take into consideration the educational wants of their district, and the extent and quality of the provisions for supplying education by means of existing schools in or sufficiently near to be convenient for the use of their district. Sect. 27.

Power to carry out Census.

In order to carry out their inquiries effectually, power is given to them to call upon public officers, clergymen, teachers, and managers of schools, for any information or documents they may require.

They may also appoint fit persons to procure such information, and to inspect the schools situated in their districts. The same powers are by this section conferred upon the Board.

No school subject to inspection, not being a public school, can be inspected without the consent of the managers, except by one of H.M. Inspectors. Sect. 30.

In case of refusal to allow Inspection.

If the managers or teachers of a school refuse to fill up the

teachers to participate. As the Bill was framed, a parochial school might under its provisions be deemed a burgh school, and so, it was thought, cease to participate in the bequest.

A similar provision, but in more precise terms, was introduced also in the House of Lords to preserve the right of the trustees of the Milne Bequest. Cf. Sect. 79.

[1] It will be observed that the public schools need not be *in* the school district. So long as they are available for—*i.e.*, within convenient reach of—the residents, that is all the Act requires.

forms required, or to allow the school to be inspected, no account will be taken thereof. Sect. 35.

School Boards report their determination to the Board.

After a school board have made their census, if they find that the requirements exceed the supply, they must determine how they can best provide sufficient school accommodation to meet them.

They shall forthwith report their determination to the Board, setting forth in their report all that may be necessary to enable the Board to judge of their determination.

If they are of opinion that the demand is sufficiently supplied by means of the existing schools, they must report accordingly.

These reports must be transmitted within *nine months* after the election of the school board. Sect. 27.

Board will deal with the Report.

The Board may approve of the determination of the school board with or without qualification or addition;

Or they may direct a further report;

Or they may direct an inquiry by persons appointed by them. Sect. 28.

School Board will carry out their determination or the order of the Board.

If the Board approve of the school board's determination, the latter will without delay carry out their determination.

If the Board order additional accommodation to be provided, though not determined on by the school board, the latter must carry out the order. Sect. 28.

Board may order inquiry at expense of School Board if Report unsatisfactory.

If any school board fail to transmit a report, the Board will send them a requisition.

If the failure continue for one month after the requisition has been sent;

Or if any report be unsatisfactory,—

The Board may direct an inquiry at the expense of the defaulting school board; and may thereafter issue such directions as they see fit with respect to providing school accommodation, and these directions must be carried into effect by the school board without delay. Sect. 29.

Existing Schools to be taken into account.

In considering the requirements of a parish or burgh, every school, whether public or not, and whether in the parish or burgh or not, which can be considered to afford efficient education to the residents in the parish or burgh, is to be taken into account by the school board and the Board. Sect. 30.

Returns may be required from time to time from any School Board.

The Board may from time to time require from any school board returns regarding their schools, and the children resident in their districts. Sect. 31.

The forms for returns will be supplied by the Board, and the managers or principal teachers of the schools must fill them up. Sect. 32.

If a school board fail to perform this duty, the Board may appoint a person to make the return at the expense of the school board. Sect. 33.

Maintenance of Schools by School Boards.

The second duty of every school board is to maintain and keep efficient every school under their management, and to provide such additional school accommodation as may, either by them or by the Board, be judged necessary.

Compulsitor.

If they fail in this duty, they may be summarily compelled to perform it by the Board, through the agency of the Court of Session. Sect. 36.

School Boards may Sell any of their Schools, &c.

In many school districts a redistribution of the existing schools may be necessary.

To carry this out, school boards are permitted, with the sanction of the Board—

1. To discontinue any school under their management.
2. To change the site.
3. To sell any school buildings connected with a discontinued school.

Under this section any parochial or burgh school may be sold, and any Free Church or other school which has been transferred to a school board, and any school which has been established by a school board. The sanction of the Board is necessary to such sale. Sect. 36.

In connection with this section and Sects. 37, 38, 39, reference is made to the Free Church of Scotland School Properties Act, 1878, which will be found in the Appendix, p. 317.

Proceedings for providing Schools.

School boards may acquire sites for school buildings, and may buy or take on lease any existing schools (except denominational and subscription schools, Sect. 38[1]), and they may enlarge any school under their management.

For the purpose of the purchase of land or buildings by school boards, the clauses of the Lands Clauses Consolidation (Scotland) Act, 1845, with respect to the purchase of lands by agreement, are incorporated with this Act.[2] Sect. 37.

By Sect. 31 of the Act of 1878, provision is made for the compulsory purchase of sites; and the Lands Clauses Consolidation (Scotland) Act, 1845, as amended by the Act, 23 & 24 Vict. c. 106, is incorporated with this Act. Cf. pp. 266-290 in the Appendix, where the clauses of the Acts mentioned relating to compulsory purchase will be found.

[1] The words of the provision in Section 38 are,—"Schools erected or acquired and maintained, or partly maintained, with funds derived from contributions or donations (whether by members of a particular church or religious body or not) for the purpose, or authorised by the contributors or donors to be applied for the purpose of promoting education."

[2] The total number of schools which have been transferred under this section up to the date of the last report of the Board of Education, is 514, of which 409 are in parishes and 105 in burghs. Of this number 255 were subscription schools, 102 belonged to the Established Church, 155 to the Free Church, 1 to the United Presbyterian, and 1 to the Episcopalian Church.—*Fifth Report of Board of Education*, p. xiii.

Transference of Schools.

School boards may also, with the sanction of the Board, accept of the transference of any denominational or subscription school; and those vested with the title to any such school, with the consent of not less than two-thirds of the administrators of the trust, may transfer it.

The transference may be effected by an ordinary disposition duly recorded.

No stamp or other duty is required.

It may be made a condition of the transference that the teacher be continued in office; also, that the schoolhouse be used for other purposes besides teaching, so long as there is no interference with the regular work of the school.

A transferred school becomes a public school under the management of the school board to whom it is transferred, and subject to the provisions of the Act.

There is no provision for retransference.[1] Sects. 38, 39.[2]

Infant and Evening Schools.

Power is given to school boards to establish infant and evening schools; the former for children under seven years of age—the latter for scholars above thirteen years of age.

Evening schools may be held in any schoolroom vested in the school board.

Infant schools may be built, purchased, or leased. For this purpose any of the powers of the Act with respect to providing schools may be put in force.

Both classes of schools are public schools. Sect. 40.

Industrial Schools.

Certified industrial schools may be established and maintained by any school board, with the consent of the Board.

These schools will be subject to the provisions of the Industrial Schools Act, 1866,[3] and not of this Act, and

[1] In this respect the Scotch Act differs from the English Act. Cf. Elementary Education Act, 1870, Sect. 24. Retransfer of school by school board to managers.

[2] Cf. p. 75, note on Transference of Schools.

[3] This Act, and the clause in the Prisons (Scotland) Act, 1877, which empowers commissioners of supply and magistrates to contribute to reformatories and industrial schools, will be found in the Appendix, pp. 298-314.

the school boards will, with regard to such schools, be subject to the jurisdiction of the Home Secretary in the same manner as the managers of any other industrial school. Sect. 41.

Combination of School Boards.

Any two or more school boards, whether of parishes or burghs, may, with the consent of the Board, combine for *any purpose* relating to public schools. Sect. 42.

IV. FINANCE AND PARLIAMENTARY GRANT.

Sections 43-53, 67, 70, 78.

School Fund.

In every parish or burgh a school fund shall be established by the school board, and a treasurer appointed to take charge of it. Sects. 43, 48.

Revenue.

The fund will consist of—

1. Money voted by Parliament—both building and annual grants. Sect. 67.
2. Money raised by way of loan. Sect. 45.
3. School fees. Sect. 53.
4. The proceeds of sales of school buildings. Sect. 36.
5. Fines recovered from parents who have been convicted under the compulsory clauses. Sect. 70.
6. Salaries of Parliamentary schoolmasters under 1 & 2 Vict. c. 87, as they fall in. Sect. 78.
7. Any portion of the parochial assessment levied for one year after the passing of the Act which may remain unexpended when the school board is elected. Sect. 78.

Expenditure.

Out of this fund all the expenses of the school board must be paid, including those incident to the election of the Board.

The chief of these expenses will be—

1. Expense of election. Candidates pay their own expenses, but all other outlay falls upon the fund. Sect. 43.
2. Expense of educational census in each parish and burgh. Sect. 27.
3. Expense of inquiry made by officers of the Board in case of default. Sect. 29.
4. Expense of returns in case of default. Sect. 33.
5. Expense of providing school accommodation, and of furnishing school buildings. Sect. 37.
6. Salaries of teachers and treasurer, and clerks, &c. Sects. 55, 52.
7. Examination of higher class schools.[1] Sect. 62, subsect. 6.
8. Expenses of putting the compulsory clauses of the Act in force. Sect. 71.

Power to impose School Rates.

To meet any deficiency in the school fund, power is given to the school boards to raise funds by means of a local rate in their parish or burgh.

The provisions on this subject are as follows:—

1. Each school board shall before the 12th of June[2] in each year certify to the parochial board of their parish or burgh, the amount of the deficiency in their school fund.

The parochial board shall add the amount required as "school rate" to the next assessment for the relief of the poor, and levy and collect it along with the poor's assessment, and they shall pay over the amount to the school board.

[1] By Sect. 18 of the Act of 1878 provision is made to enable school boards, with the sanction of the Department, to maintain the buildings of higher class schools, and to promote efficient education therein, out of the school fund.

[2] Poor's assessment generally runs from Whitsunday to Whitsunday, and in the great majority of parishes is levied about the term of Martinmas for the year ending at the following Whitsunday. This practice, however, is not uniform.

2. In the case of burghs, parishes, or school districts which include more than one parish—*e.g.*, Glasgow—the school board shall certify to the respective parochial boards the amount (not of the deficiency in the school fund, but) *of the rate on each pound of rental* which they shall levy and collect as "school rate" along with the poor's assessment.

3. In cases where

(*a.*) There is no assessment for the relief of the poor;[1]

(*b.*) Such assessment is not laid one-half on owners and one-half on occupiers; the school boards shall directly themselves levy and collect school rate as if it were poor's rate.

In all cases the school rate shall be levied in the same manner as poor's assessment; and the laws applicable for the time to the imposition, collection, and recovery of poor's assessments shall be applicable to the imposition, collection, or recovery of school rate.[2] Sect. 44.

By Sect. 32 of the Act of 1878, it is provided that the parochial boards are bound to pay over the school rate without deduction on account of the cost of collection. Cf. p. 136.

Any surplus proceeds of a school rate shall be credited to the next year; and any deficiency shall be provided for in next year's assessment. Sect 44.

Power to Borrow.

School boards may, with the consent of the Board, borrow money on the security of the school fund and school rate,[3] and may charge these with the payment of both principal and interest, when they require to incur expense in *providing or enlarging* schoolhouses.

For the purposes of such borrowing, the clauses of "The

[1] According to the last report of the Board of Supervision it appears that there are 820 "assessed" parishes, of which in 611 the funds for the relief of the poor are raised by an equal rate upon owners and occupiers respectively: in 189 there is a classification of occupants in terms of Sect. 36 of the Act 8 & 9 Vict. c. 83; in 20 the assessment is levied according to established usage. In 67 parishes the funds are raised by voluntary contributions.—*Thirty-third Annual Report of the Board of Supervision*, p. v.

[2] This provision is so framed that, in the event of a new Poor Law Act being passed, the provisions of it will apply to the collection of school rate.

[3] And in no other way. The loan must be charged on the fund and rates; a temporary loan from a banker would be illegal.

Commissioners Clauses Act, 1847," with respect to mortgages, are incorporated with this Act.[1]

The Public Works Loan Commissioners may lend money at 3½ per cent to school boards on the security of the school fund and school rate, to be repaid within fifty years.[2] Sect. 45.

School Fees.

The fees in all public schools, except the higher class schools,[3] are to be fixed by the school boards, and paid to the treasurer of the school board, who shall keep a separate account of the fees derived from each school.

The fees go into the school fund. But power is given to school boards to pay the fees of any school directly to the teachers of that school, or to divide them among the teachers as they shall determine. Sect. 53.

In country parishes this power is likely to be exercised. In many parishes it will suit the school boards to contract with the teachers for so much salary and the fees. In others, it will be more convenient to offer a fixed salary irrespective of fees.

Funds over which the School Boards have powers of Administration.

Besides the school fund which the school boards may deal with directly, there are certain funds handed over to them under the provisions of the Act over which they have powers of administration. These are:—

Existing Bequests.

A. The income, as it accrues, of any money that has been vested—

[1] These clauses will be found in the Appendix, p. 292.

[2] This clause differs from the clause in the Elementary Education Act, 1870, giving power to borrow, in two particulars:—

1. The power is given in this clause when the Board "shall *require to incur* expense';" in the English Act, when the "school board *incur* expense."

2. The Public Works Loan Commissioners must be fortified by a recommendation from the Department before they lend money to a school board. No such *recommendation* is necessary. But the Board must consent before the school board can borrow in any market.

Sect. 67. From the passing of the Act up to 31st December 1877, loans have been sanctioned amounting in all to £2,195,210, 9s. 9d.—*Fifth Report of the Board of Education*, p. ix.

[3] Fees in higher class public schools are fixed by the teachers with the approval of the school board. These fees do not go into the school fund, but are paid in full by the treasurer to the teachers. Sect. 62, sub-sects. 3 and 5.

1. In the heritors or kirk-session, or any trustees, for the behoof of the parish school of any parish; or,
2. In the town council or magistrates of any burgh, or any trustees, for the behoof of the burgh school; or,
3. For the promotion of any branch of education in a parish or burgh school; or,
4. To increase the income of any teacher in a parish or burgh school.

B. The annual sums which town councils have been in the custom of paying out of "the common good," or from any other funds under their charge, to the burgh schools under their management.

The first class (*A*) are to be administered according to the terms of the trust. The second class (*B*) for the purpose of promoting higher instruction.

But power is given to school boards from time to time, with the sanction of the Board, to "vary or depart" from the trusts mentioned in the section, with a view to increase the efficiency of the parish or burgh school by raising the standard of education or otherwise. Sect. 46.

Future Bequests.

Power is also given to school boards to receive any property or funds which may in future be bequeathed or conveyed to them for the behoof of any school under their management, and they must administer such property according to the wishes of the donors. Sect. 47.

Treasurer.

A treasurer is to be appointed by each school board either at the first meeting of the board, or as soon thereafter as convenient. His appointment is during pleasure, and he is to receive such remuneration as the school board see fit. Power is given to appoint more than one person to be treasurer. Sect. 48.

Two or more school boards may arrange to employ the same treasurer. Sect. 52.

Duties of Treasurer.

The treasurer is to keep the books of the school board with an accurate account of—

1. The school fund.
2. All other property and funds under the administration of the school board.
3. The expenditure of those funds.

A separate account is to be kept by him of—

1. The school fund.
2. The fees derived from each school.
3. Every property or fund held on a separate trust.
4. The fees of the higher class schools. Sect. 48.

Transmission of Accounts to Accountant.

Each year on the 1st of January every treasurer is to transmit to the accountant of the Board, with vouchers, an account showing the money receipts and payments of the school board, and the state of the funds and property under their charge made up to the Whitsunday of the preceding year. Sects. 48 and 49.

The accountant will audit the accounts and report and retransmit them to the treasurer for preservation. Sect. 48.

Inspection of Accounts.

These accounts may be inspected by any member of the school board, or by any ratepayer on the written requisition of five ratepayers. Sect. 48.

These accounts and the treasurer's books may also be inspected by the Board, and the Board may order any account to be printed at the expense of the school board. Sect. 48.

Transmission of First Accounts by Treasurers.

Every treasurer must transmit his first account to the accountant on or before January 1, 1874, made up to Whitsunday 1873.

Any treasurer who fails to transmit his accounts on the 1st of January of each year, may be compelled to do so by the Court of Session on the petition of the accountant. Sect. 49.

Accountant.

The accountant of the Board shall have his office in Edinburgh. Sect. 50.

His duty is to audit the accounts of the different school boards, and to prepare each year an abstract of the receipts and expenditure of each school board.

This abstract, together with his report, he shall transmit to the Board, to be laid before Parliament. Sect. 51.

Parliamentary Grant.[1]

The provisions on the subject of the Parliamentary grant are as follows :—

The Board (now the Endowed Schools Commissioners) will submit for the consideration of the Department the conditions under which, in their opinion, grants for higher instruction should be distributed in the public and State-aided schools. Sect. 5.

Cf. the Endowed Institutions (Scotland) Act, 1878, p. 325, Sect. 11.

The Department will draw up and issue a code containing the rates and conditions under which the public money will be distributed. Sect. 67.

The statute does not interfere with the construction of the code except in the following particulars :—

1. It authorises the Department to make annual grants to the managers of all public schools, and to the managers of any *existing* denominational or non-public school which in the opinion of the Department is efficiently contributing to the secular education of the parish or burgh in which it is situated.

2. It authorises the Department to give extra grants—*i.e.*, grants over and above the ordinary Parliamentary grant—in any parish or burgh in which a rate of 3d. in the £1 has been levied and produced less than £20, or than 7s. 6d. per child of *the number of children in average attendance at the public schools* of such parish or burgh.

[1] Parliamentary grant is defined as a grant made in aid of a school out of moneys provided by Parliament for the civil service, intituled "for public education in Great Britain."

The subject of Parliamentary grants is taken out of its order in the Act, as it comes properly under the head of Finance.

The extra grants in such cases to be such as will bring up the amount of 3d. rate to £20, or to 7s. 6d. per child.

E.g. Suppose a parish with a rental of £8000 and a population of 1800.

3d. in £1 = £100.

If $\frac{1}{6}$ of the population (as ought to be the case) were in attendance at the public schools = 300.

£100 ÷ 300 = 6s. 8d. per child. In this case the Department would give an *extra* grant of 10d. per child to make up the 7s. 6d.

Or suppose a parish with a rental of £1200 and a population of 180.

3d. in £1 = £15.

$\frac{1}{6}$ of the population = 30.

£15 ÷ 30 = 10s. per child. Nothing here would be required to make up the 7s. 6d. But £5 would be given as extra grant to make up £20.

3. It authorises the Department to make special grants in favour of parishes in the counties of Inverness, Argyle, Ross, and Orkney and Shetland, in which a rate of 9d. in the £1 has been levied. In the rest of Scotland the annual grant to a school will be reduced to 17s. 6d. per scholar if it exceed the income of the school derived from local sources—*i.e.*, fees, rates, and subscriptions. *E.g.*, if the school income amounts to £100 and the grant *earned* to £105, only £100 will be paid to the school managers in respect of that school. But in these five counties this rule will not apply, except in burghs.

4. It authorises the Department to make building grants in pursuance of a written application by *any school board* sent to the Department before the 31st of December 1873.

5. It authorises the Department to pay over to the school board of any parish (not burgh) in the counties previously mentioned, a sum of £300 for each schoolhouse, and £100 for each teacher's residence which may be required, provided that a 9d. school rate has been levied in the parish for one year.

(1.) It forbids the Department to make any annual grant in respect of instruction in religious subjects.

(2.) It forbids the Department to make any annual grant in

respect of any *new* denominational or non-public school unless the Department after due inquiry are satisfied that such school is specially required in the locality in which it is situated, regard being had to the religious belief of the community using such school. Sect. 67.

The Department must report specially to Parliament upon each school of this character established after the passing of the Act. Sect. 75.

In other respects the construction of the Code is left to the discretion of the Department, care being taken that the standard of education which now exists in the public schools of Scotland shall not be lowered, and that a uniform high standard shall be maintained in all inspected schools. Sect. 67.

The Code must lie on the tables of both Houses of Parliament at least one month before it comes into force, and during that time it may be modified and amended at the instance of any member of either House. Sect. 67.[1]

Denominational Schools.

The Episcopalian schools in receipt of Parliamentary grants have increased since the passing of the Act from 46 to 72, and the Roman Catholic schools have increased from 22 to 112.—Report of Committee of Council on Education in Scotland, 1877-1878.

V. TEACHERS.

Sections 54-61, 76, 77, 78.

Definition.

Teacher, by the definition, includes schoolmaster, schoolmistress, assistant teacher, pupil-teacher, sewing-mistress, and every person who forms part of the educational staff of a school.[2]

[1] The Code for 1878 will be found in the Appendix, p. 394.

[2] An objection was taken in Committee to the words "every person who forms part of the educational staff of a school." Mr Forster said that they were borrowed from the definition of teacher in the English Act: that it would be a pity to strike them out of the Bill, because if that were done "instructors in science, drawing, drilling, and a number of other subjects, would be excluded from the definition clause."

Teachers of Parish and Burgh Schools in Office.

Teachers of parish or burgh schools appointed before the 6th of August 1872 will not be prejudiced by any of the provisions of the Act with respect to tenure of office, emoluments, or retiring allowance, as by law, contract, or usage secured to or enjoyed by them, except in the following particulars:— Sect. 55.

1. If a teacher be found guilty at the instance of his school board of immorality or cruelty, or improper treatment of the scholars under his charge, he may be deprived of his office on the sentence of the sheriff, whose judgment shall be final.[1]

2. If a school board consider a teacher to be incompetent, unfit, or inefficient, they may request the School Inspector, whose duty it is to inspect the school, to report to them specially regarding *the school and the teacher.* On this report they may dismiss the teacher.

But before judgment they must furnish the teacher with a copy of the report, and the sentence of the school board must be confirmed by the Board.

Teachers of parish schools who may be removed in this way have the same right to retiring allowances as they had under the 19th and 20th sections of the "Parochial and Burgh Schoolmasters (Scotland) Act, 1861,"[2] in cases where such teachers were permitted or required to resign, or were dismissed or removed from office under that Act; and the school boards have the same powers of granting allowances as were by that Act vested in the heritors and ministers.[3] Sect. 60.

Teachers appointed after the passing of the Act.

After the passing of the Act, the right and duty to appoint teachers to all public schools are in the school boards. They may assign them such salaries or emoluments as they think fit. Appointments shall be during the pleasure of the school boards.[4] Sect. 55.

[1] This provision takes the place of the provisions on the subject contained in 24 & 25 Vict. c. 107, Sect. 14, Appendix, p. 361.

[2] 24 & 25 Vict. c. 107, Appendix, p. 363.

[3] This provision takes the place of that in the Act of 24 & 25 Vict. c. 107, Sects. 19 and 20, which was found to be inoperative.

[4] A proposal was made in Committee to alter this provision in such a manner as would interfere with freedom of contract between the school boards and the

In other words, the school boards and the teachers may make any agreement as to salary and tenure of office that they like. But the terms of the agreement may be altered from time to time.[1]

By Sect. 24 of the Act of 1878, special provision is made regarding the Parliamentary franchise of teachers. Cf. p. 132.

Vacancies between the passing of the Act and the Election of the School Boards.

No vacancy in the office of teacher in any public school occurring after the 6th of August 1872 can be filled up until the election of the school board of the parish or burgh in which the vacancy occurs. If a vacancy should occur, the old managers—*i.e.*, the heritors and minister in case of a parish, and the town council in case of a burgh school—must make due provision for the temporary discharge of the duties of the vacant office until it can be filled up under the Act. Sect. 78.

Teachers' Houses.

Teachers' houses possessed under any of the recited Acts regarding parochial or Parliamentary schools[2] are to be maintained by the school boards so long as the teachers now in possession remain. After they leave they may be maintained, or they may be sold, or otherwise disposed of by the school boards.[3]

School boards may or may not provide houses and gardens for future teachers. This becomes a matter of contract between the school boards and the teachers.[4]

teachers. But it was not pressed. The Lord Advocate stated that the matter had received the most careful and anxious attention of Government, and it was not considered satisfactory to interfere between the school boards and their teachers. They must hold the school boards responsible for the due discharge of their duties and for the appointment of proper teachers. They must trust them to appoint teachers in whom they have confidence; and it would not be wise or prudent to compel the school board to retain the services of a teacher in whom the school board themselves have not confidence. . . . He fancied they would only be too glad to retain the services of a good teacher when they got him.

[1] Teachers are *not* precluded by the Act from accepting offices other than those of teacher.

[2] The Acts of 1803, of 1838, of 1861.

[3] Cf. Sect. 86, p. 72.

[4] It was proposed in Committee to make it compulsory upon the school board of every parish to provide a house and garden for every teacher, or for every principal teacher, under their control. In reference to this proposal the Lord Advocate

When the school boards determine to provide houses, they may exercise all the powers conferred by the Act with respect to school houses or buildings.[1] Sect. 54.

Salaries of Teachers of Parliamentary Schools.

Teachers of Parliamentary schools will continue to receive the sum payable to them under the Act of 1 & 2 Vict. c. 87, so long as they hold their offices. Sect. 78.

Certificates of Competency.

The principal teacher in every public school must be the holder of a certificate of competency.

But any one who at the passing of the Act is—

1. Principal teacher of a parish, side, Parliamentary, or heritors' girls' school;
2. Principal teacher of a burgh school, or subordinate teacher of a burgh school if he is member of council of a Scotch university;
3. A holder of a certificate from, or registered as a certificated teacher by, the Committee of Council on Education;

shall be *deemed* to be a holder of a certificate of competency, and as such he will be eligible as a teacher in a public school.[2] Sect. 56.

Examination for Certificates of Competency.

To gain a certificate of competency hereafter, candidates must pass an examination. Sect. 58.

The regulations for the conduct of this examination will be issued by the Department, who will also appoint the examiners. Sect. 57.

said: "The principle of the Bill on this point is that it might be necessary, or it might be convenient, to provide houses and gardens in such places as the school boards thought suitable; and, if they agreed that it was necessary, or short of necessary, convenient, that a certain remuneration be given instead of the house, power was given to do it. . . . Instead of laying down a rigid statutory rule, which might be productive of great inconvenience in particular cases, he thought the matter had better be left to the discretion of school boards."

[1] Cf. Sect. 37.

[2] Cf. p. 88, note 1.

University Degrees.

If a candidate has taken a degree in arts or science in any university of England, Scotland, or Ireland, the examiners may dispense with his examination in any subject comprised in his degree examination.

But he must satisfy the examiners of his skill in the theory and practice of teaching. Sect. 59.

Retiring Allowance.

A school board may permit any teacher of a public school to resign on condition of receiving a retiring allowance, and they may pay his retiring allowance which they grant him out of the school fund.

Rights to such allowances under the existing law possessed by any teacher appointed before the passing of the Act will not be affected.[1] Sect. 61.

Registrar to perform Statutory Duties imposed upon Schoolmasters not relating to Teaching.

The statutory duties not relating to teaching imposed upon the schoolmaster of a parish by the Act of 42 Geo. III. c. 91[2] (the Militia Act), by 7 Will. IV. and 1 Vict. c. 83,[3] by 8 & 9 Vict. c. 33,[4] and any similar duties imposed by statute upon the schoolmaster of a parish, will be performed by the teacher in office so long as he continues to be teacher in a public school in the parish. After that these duties will be performed by the registrar. Sect. 76.

Schoolmasters' Widows' Fund.

Contributors to the Schoolmasters' Widows' Fund remain

[1] For retiring allowances under 24 & 25 Vict. c. 107, cf. Appendix, p. 363.

[2] By this Act (42 Geo. III. c. 91) the parish schoolmasters have to order returns to be made in writing to the deputy-lieutenants of all the men between 18 and 45 in the parish; to give notice to heads of houses to produce lists of men of these ages; and at subdivision meetings to verify the lists on oath.

[3] By this Act (7 Will. IV. and 1 Vict. c. 83) parish schoolmasters are made custodiers of certain public documents deposited with them under the standing orders of either House of Parliament—*e.g.*, maps and plans of works to be executed under the authority of statute.

[4] By this Act, The Railway Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 33), parish schoolmasters are to receive and take care of certain certificates or plans of works.

liable in the obligations, and are entitled to the benefits under the Act of 9 & 10 Vict. c. 226.

No teacher appointed to a public school hereafter is bound to contribute to the fund, unless he was a contributor at the passing of the Act. Sect. 77.

There is nothing in this Act to interfere with the passing of a new Widows' Fund Act, the provisions of which might include the establishment of a new fund for the behoof of the widows and children of those teachers who may hereafter be appointed under this Act. This would be matter for private legislation.

Special provisions are made for teachers of higher class schools.

VI. HIGHER CLASS PUBLIC SCHOOLS.

Sections 62, 63, 64.

What Higher Class Schools are.

Higher class public schools are declared to be burgh schools existing at the passing of the Act, in which the education given does not consist chiefly of elementary instruction in reading, writing, and arithmetic, but of instruction in Latin, Greek, modern languages, mathematics, natural science, and generally in the higher branches of knowledge.

Provisions regarding them.

The provisions regarding these schools are as follows:—

Management.

1. They are to be managed exclusively by the school boards of their respective burghs, with a view to promote the higher education of the country. Sect. 62, subsect. 1.

2. In order that the funds of these schools and the time of the teachers may be chiefly applied to giving instruction in the higher branches, the school boards who manage them are (so

far as practicable and expedient, and subject to the approval of the Board) to relieve them of the necessity of giving elementary instruction to young children, by providing a sufficient number of elementary schools elsewhere in the burgh. Sect. 62, subsect. 4.

Funds.

3. The funds of these schools consist of—
   (1.) Contributions from "the common good" of the burgh.
   (2.) Any endowments belonging to the schools.
   (3.) Endowments for the promotion of instruction in particular subjects, or for the benefit of teachers of particular branches in the schools.
   (4.) Fees paid by scholars.

These funds do not go into the school fund. In each case they are to be administered exclusively for the benefit of the school to which they belong.

The fees are to be fixed by the teachers with the approval of the school board, subject, in the event of a difference of opinion, to the determination of the Board; and the treasurer of the school board must keep a separate account of the fees, and the full amount of the fees shall be divided and distributed among the teachers as the school board shall determine. Subsect. 3.

The expenses of examining the schools shall be paid out of the school fund. Sect. 62, subsect. 6.

The houses shall be deemed schoolhouses within the meaning of the 45th section of the Act. Sect. 62, subsect. 6.

The Act of 1878 (section 18) has modified the provisions of this section in the following respects:—

1. *Expenses of School Buildings.*—School boards, which have the management of higher class public schools, are bound to maintain the buildings out of the school fund in the same manner in which they are bound to maintain the buildings of any other school under their management.
2. *Expenses for the promotion of Higher Education.*—School boards are empowered to pay out of the school fund such other expenses for the promotion of higher education as are not provided for by the revenues mentioned in this section.

But no expenditure can be incurred without the consent of the Department. But cf. circular of Department, p. 453.

Teacher.

4. The teachers of these schools are not to be examined, like those of the elementary schools, through the agency of the Department.

The school boards of the different burghs in which they are situated will regulate the examinations, and fix the standard of qualification for the teachers. The examiners are to be professors in some Scotch university, or teachers of distinction in a higher class public school. Sect. 62, subsect. 2.

Any teacher in one of these schools, who is a member of council of a Scotch university, is to be deemed qualified as a teacher in any of these schools. Sect. 62, subsect. 2.

Examinations.

Each of these schools must be examined annually by examiners appointed by the school board.

By Sect. 20 of the Act of 1878, the Department are empowered to make provision for the examination of these schools; and examinations held in accordance with the new provision are to take the place of the examinations provided for by this section.

By Sect. 21 of the Act of 1878, the Department may make provision for the examination of higher class schools under private management.

The expenses of these examinations may be paid out of the school fund. Sect. 62, subsect. 6.

The Board may require from time to time a statement of the funds and revenues of any of these schools, and of the application of them. Sect. 62, subsect. 3.

Higher Class Schools fixed by Act.

The eleven schools following—viz.:

New Grammar School, . . .	Aberdeen;
Academy, ...	Ayr;
Academy, ...	Dumfries;
High School, ...	Edinburgh;
Academy, ...	Elgin;
High School, ...	Glasgow;
Burgh School, ...	Haddington;

Academy, ...	Montrose;
Grammar School and Academy, .	Paisley;
Academy, ...	Perth;
High School, ...	Stirling;

are constituted higher class public schools, to be dealt with according to the foregoing provisions.[1]

The following schools have been erected into higher class public schools since the passing of the Act:—

High School, ...	Arbroath.
Academy, ...	Hamilton.
Academy, ...	Irvine.
High School, ...	Leith.
Bonnington Park School, . .	Peebles.
Grammar School, . . .	Dunfermline.

New Higher Class Schools in Burghs.

The school board of any burgh, by a resolution at a meeting specially called on fourteen days' notice in writing to each member, may (subject to the approval of the Board) resolve that any school under their charge shall be deemed a higher class school.

Such school will thereafter be managed according to the provisions regarding higher class public schools. Sect. 62.

New Higher Class Schools in Parishes.

The school board of any parish may come to a similar resolution under the same conditions, with regard to any parish school under their management existing at the passing of the Act, in which, from large endowment, or any other cause, the higher branches are taught to such an extent that the school cannot reasonably be considered as chiefly an elementary school. Sect. 63.

After a school board have passed a resolution to convert a

[1] These eleven schools are selected as being situated in the principal towns in Scotland. Dundee High School, Inverness Academy, Greenock Academy, and the Madras College, St Andrews, were included in the Bill as introduced. But they were omitted in passing through the House of Commons on the motions of the representatives of these towns.

school into a higher class school, they will cease to receive Parliamentary grant in respect of it.

No part of the funds or revenues of a higher class public school will pass into the school fund.

No part of the expenses of a higher class public school can be paid out of the school fund :—

Except, 1. Expenses of examination of the school.

2. Expenses of providing and enlarging school buildings, which may be met by borrowing money on security of the school fund and school rate. Sect. 64.

These provisions have been modified by the Act of 1878, Sects. 18, 19, 20. Cf. note *supra*, p. 34.

These provisions, though expressing the feeling of the Legislature with regard to higher education rather than forming a complete code of law regarding it, are nevertheless of great importance. They are, in a sense, experimental. No provisions regarding higher education were made in the English Act. The Education Department, through the Vice-President of the Council on Education, repudiated all responsibility with regard to higher education.[1] But if the experiment answers, these provisions can be supplemented at a future time. By means of these a graded system of education is recognised. The school boards, under whose management these schools are placed, are enjoined by the statute "to manage them with a view to promote the higher education of the country," and "to relieve the schools from the necessity of giving elementary instruction in reading, writing, and arithmetic to young children, by otherwise providing sufficient public school accommodation for such elementary instruction, so that the funds and revenues of such higher class schools, and the time of the teachers, may be more exclusively applied to giving instruction in the higher branches."

[1] "Hitherto the Education Department had confined itself to fixing the standard for elementary schools, but if this amendment [an amendment to give the Department the control of the examination of principal teachers of higher class schools] were adopted, it would mean that they should be responsible for the standard of higher education. He was not, however, prepared to go to that extent, though he did not say a time might not come when they might consider it advisable to do so, not only in Scotland, but in England also."—*Mr W. E. Forster, in Committee*, June 13.

Two of the evils of Scotch education—want of any line of demarcation between the higher and the elementary schools, and want of organisation in the higher schools themselves—are thus fairly met, and the first steps towards a remedy are adopted.

The chief difficulty, however, with which higher education in Scotland has to contend—want of money—is untouched by these provisions. "It is not in accordance with the views of this House," the Lord Advocate said on introducing the Bill, "to give imperial money, or to authorise local taxation in order to provide for higher class education, and therefore I can only provide for the higher class education otherwise than pecuniarily."

The question therefore remains, From what source are these schools to be supplied with money?

Under the Act, all that they have now is retained to them. And power is given to provide new or enlarge old buildings, and to pay for the examination of their scholars, at the public expense of the burgh in which they are situated. But they are still inadequately endowed.

Now, however, that they have a recognised position in the educational system of the country, there is some probability that they will be selected as objects of private generosity. Individuals have of late years gifted or bequeathed large sums of money to the Scotch universities. An association for the better endowment of the universities has met with considerable success. Similar agencies may be put in force in the interests of the higher class schools.

When from any source, public, semi-public, or private, funds are secured for the use of these schools, the importance of the provisions in the Act (whether supplemented by future legislation or not) will be acknowledged.

Since the passing of the Act, some progress has been made towards the improvement and extension of these schools. In six burghs the school boards have availed themselves of the provisions enabling school boards to convert elementary into higher class schools, and there are now seventeen statutory schools of this class. A Royal Commission, appointed to inquire into the hospitals and endowed institutions of Scotland, have recommended that some portion of the surplus revenues of these institutions should be devoted to the

improvement of higher education. This recommendation has been followed in one or two of the institutions with good results. An Act has been passed this year—The Endowed Institutions (Scotland) Act, 1878—which will be found in the Appendix, and to which attention is directed, which enables the governing bodies of the unreformed institutions to bring the institutions into harmony with the times, and to make changes in the application of their endowments. The Act is permissive and incomplete, but it contains provisions which, if carried out in a generous and enlightened spirit, may exercise an important influence in the future of the higher education of Scotland. The main obstacle to the success of the higher class public schools—want of money—may be adequately met, as power is given to the governing bodies to transfer the endowments of any institution, or part of them, to one or more school boards. Under this power surplus revenues may be handed over to those school boards which have the management of higher class public schools, and may be devoted by them to the promotion of higher education. This power will, it is to be hoped, be wisely exercised.

Independently, however, of the operation of the Endowed Institutions Act, the special wants of the higher class schools have been met by the provisions introduced into the Education Act of this year. In that Act it has been provided that the buildings of the higher class schools are to be maintained out of the school fund in the same manner as the buildings of the elementary schools; and it has been provided further that school boards may incur such expenses for the promotion of efficient education in the higher class schools as are not provided for by the revenues mentioned in Sect. 62 of the Act of 1872, under the proviso in both cases that the Department sanctions the expenditure. This is a wide power to confer upon school boards, the exercise of which may be a valuable lever to apply to the governing bodies of the wealthy endowed institutions of the country.

VII. MISCELLANEOUS PROVISIONS.

Sections 65-80.

Inspection.

Every public school, and every school in receipt of Parliamentary grant, must be open at all times to any of H.M. Inspectors.[1] But the inspectors are not required to examine in religious knowledge, or in any religious book. Sect. 66.

[1] A list of H.M. Inspectors, with the districts assigned to them, will be found in the Appendix, p. 389.

By this section and the definition of "H.M. Inspectors"[1] two changes are accomplished.

1. Denominational inspection is abolished: Scotland will be divided into districts, and every inspector will visit all the schools in the district assigned to him.
2. Inspected schools will be open at all times to the inspectors. It will be no longer necessary to give notice of the time of the inspector's visit, unless it is otherwise provided in the Code. And for the future no teacher can refuse to admit an inspector into his school.

School boards may require an inspector to make special reports on any school under their management which is taught by a teacher appointed before the passing of the Act. Sect. 60, subsect. 2.

Conscience Clause.

Every public school, and every school subject to inspection or in receipt of public money under this Act, is open to children of all denominations. Any child may be withdrawn by his parents from any instruction in religious subjects and from any religious observance in the school, without suffering any disadvantage on this account with respect to secular instruction.[2] Sect. 68.

Time-Table.

A time-table approved of by the Department will be prepared for each school, specifying the times at which instruction in religious subjects is given, and any religious observance practised in the school. Sect. 68.

The only times at which such instruction can be given or such observance practised are at the beginning or at the end, or

[1] "Her Majesty's Inspectors" shall mean the inspectors of schools appointed by Her Majesty on the recommendation of the Scotch Education Department; and "subject to inspection" shall mean subject to be inspected by the said inspectors, or any of them.

[2] The child is to be withdrawn from the inspection, &c., not necessarily from the school. Cf. p. 99, note 2.

A regulation of the Education Department on this matter is to the effect that, if the premises admit of it, the children withdrawn are to receive instruction in secular subjects during the time or times set apart for religious instruction or observances.

both at the beginning and at the end, of each meeting of the school for elementary instruction. Sect. 68.

E.g., A school meets for elementary instruction at 10, and separates at 1; and meets again at 2, and separates at 4.

In this case the Bible lesson and Catechism can be given, and a hymn can be sung or prayers said at 10 or at 2, or both at 10 and at 2, and also at 1 or at 4, or both at 1 and at 4. There may thus be four distinct times for religious instruction each day. But the time or times must be fixed in the time-table, and children may or may not attend at these times without being placed at any disadvantage with respect to the secular teaching.

Latin, Greek, and the higher subjects may be taught before 10 or between 1 and 2, or after 4, as has been the custom in many schools, if these subjects are not taught during the regular school hours.

Compulsory Clauses :—Parents bound to educate their Children.

Every parent is bound to teach his children between the ages of five and thirteen, reading, writing, and arithmetic.

If he fails to do so without a reasonable excuse, he breaks the law. Sect. 69.

Poverty no excuse.

Poverty is no excuse. If he is a poor man and unable to pay school fees, he must apply to the parochial board of his parish or burgh, and they (having satisfied themselves of his inability) will pay the fees or part of them for him out of the poor fund.

By Sect. 22 of the Act of 1878, an appeal is given to the Sheriff against a refusal on part of the parochial board to pay such fees.

The reasonable wishes of the parent in selecting the school at which he desires his children to attend will be respected. But the school must be either a public school, or a school in receipt of Parliamentary grant and under inspection.[1] Sect. 69.

Blind Children to be educated.

The provisions of this section apply to blind children. Sect. 69.

[1] Cf. p. 100, note 1.

Defaulting Parents.

Defaulting parents will be dealt with as follows:—

Every school board must appoint an officer to ascertain and report what parents in their parish or burgh neglect to educate their children.

The clerk of the school board will keep a correct list of the defaulting parents and their children reported on.

The school board may, when and if they like, summon any of the defaulters before them to explain the cause of his neglect.

If he fail to appear, or, having appeared, to satisfy the school board, the latter are bound to certify in writing that he has been and is grossly and without reasonable excuse failing to discharge his duty towards his children.

On such certificate being sent to the Procurator-Fiscal of the district in which the parent resides, or to some other person appointed by the school board, he is bound to prosecute such parent before the Sheriff. On conviction, the parent is liable to a fine of £1, or to fourteen days' imprisonment. He may also be found liable in expenses up to £1.

If he continue to break the statute in this respect, he may be proceeded against at intervals of three months. Sect. 70.

The expenses of the prosecution, in so far as not awarded against and recovered from the parent, are to be paid out of the school fund. Sect. 71.

Employers of Children shall be deemed to undertake the duty of Parents.

Any one who employs as a domestic or farm servant, or in a mine, factory, or workshop, or ordinary shop, a child under thirteen years of age who has not attended school regularly for at least three years, and who is unable to read and write, shall be deemed to undertake the duty of a parent with respect to the education of such child *if he continue him in his employment after notice from the school board* of his parish or burgh that the child has not received an elementary education.

And he shall be liable to the same penalties for neglect as a parent.

But the parent is not on this account exempted from liability. Sect. 72.

Exemptions.

A certificate of ability to read and write, and of a knowledge of elementary arithmetic, granted by one of H.M. Inspectors in favour of any child, exempts parents and employers of the child from prosecution, or from any proceeding under the Act, for neglecting to provide for his education. Sect. 73.

Important alterations have been introduced into the law as to the employment of children by the Act of 1878. These are summarised in Part III., and will be found at p. 117-120.

Reports.

School boards must report to the Board and make such returns and give such information as the Board may require. Sect. 74.

The Board must submit every year a report of their proceedings during the past year to the Department, to be laid before Parliament. Sect. 6.

The Department will cause every year a report of their proceedings during the past year to be laid before Parliament. And their report must contain a special report upon every non-public school established after the passing of the Act which they consider entitled to receive Parliamentary grant. Sect. 75.

Evidence of orders, &c., of the Department.

All orders, minutes, certificates, and other documents of the Department, if purporting to be signed by a secretary or assistant-secretary of the Department, or by any officer in Scotland acting as secretary or assistant-secretary of the Department, will be deemed to have been made by the Department. Sect. 65.

The Milne Bequest.

The powers of the trustees under the Milne Bequest are preserved.[1] Sect. 79.

[1] Cf. p. 14, note 2, as to Dick Bequest.

Repeal of Acts.

The recited Acts, viz.:—

1. The Act of 1696.[1] The first Parliament of King William.
2. The Act of 1803.[2] 43 Geo. III. c. 54.
3. The Act of 1861.[3] 24 & 25 Vict. c. 107—

are repealed, and all other Acts, so far as inconsistent with the provisions of this Act, under the following provisos—

(1.) That the assessments levied under the recited Acts shall continue to be levied for the year immediately ensuing the passing of this Act, in the same way and to the same extent as in the preceding year.

The proceeds of these assessments are to be expended according to the law as it existed before the passing of the Act, by the authorities charged with the administration thereof, until

[1] By this Act (1696) it was ordained that a school should be established and a schoolmaster appointed in every parish not already provided, by the advice of the heritors and the minister of the parish.

Under it the heritors were bound to provide a commodious schoolhouse and a salary not above 200 (£11, 2s. 2⅔d.) nor under 100 merks (£5, 11s. 1⅓d.) Each heritor was to be assessed in proportion to his valued rent, and was allowed relief from his tenants to one-half.

[2] By this Act (1803) the heritors in each parish were bound to provide school accommodation and maintain the buildings. Provision was also made for the erection of side schools in extensive parishes. Schoolmasters were to be elected by the heritors and minister as one body, but, by Sect. 22, no heritor was entitled to vote at any meeting with reference to schools who was not "a proprietor of lands within the parish to the extent of at least £100 Scots of valued rent appearing in the land-tax books of the county," and these qualified heritors might vote by proxy, or by letter under their hand. The schoolmasters elect were examined and approved by the Presbyteries, and were required to sign the Confession of Faith, and the formula of the Church of Scotland. Their salaries ranged between a maximum of 400 (£22, 4s. 3d.) and a minimum of 300 merks (£16, 13s. 4d.) They held office *ad vitam aut culpam*. The superintendence of the schools was committed to the ministers of the Established Church; the regulations as to teaching and the cognisance of offences committed by the schoolmaster, to the Presbyteries of the bounds.

[3] By this Act (1861) the provisions of the Act of 1803 regarding the examination of teachers by the Presbyteries were abolished, and an examination by examiners appointed by the universities substituted. Tests also were abolished. Instead of signing the Confession of Faith and formula of the Church, the teacher was required to sign a declaration that he would not teach any opinions opposed to the Bible or the Shorter Catechism, nor exercise the functions of his office to the prejudice of the Church of Scotland. The law regarding the dismissal and resignation of teachers was altered, and provision was made for granting retiring allowances. The management and superintendence of the parochial schools were not expressly taken out of the hands of the minister and Presbyteries of the Established Church, and these schools continued to be examined by the Presbyteries till the passing of the Act of 1872.

school boards are elected. Whereupon any surplus which remains will be handed over to the school board.

(2.) That no vacancy occurring in the office of teacher of a parish or burgh school shall be filled up except under the provisions of this Act, and if a vacancy should occur in a parish or burgh between the passing of the Act (6th of August 1872) and the election of the school board, the managers must make provision for the temporary discharge of the duties of the office until it can be filled up.

(3.) That the existing teachers of Parliamentary schools established under the Act of 1838,[1] shall continue to receive the salaries payable to them as heretofore, so long as they hold office in their present schools. And that the sum payable to any such teacher shall, after he leaves the school, be paid over to the school board of the parish for purposes of the school fund.

1 This Act (1838), on the preamble that the parish schools and other means of education existing in the Highlands and Islands were wholly inadequate to the education of the people, provided that a sum of money should be appropriated and invested by the Lords of the Treasury for the endowment of additional schools in certain parishes in the Highlands and Islands. These schools were generally called Parliamentary schools. The heritors provided the building, and with the minister of the parish appointed the teachers. The Treasury paid the salaries out of the annual proceeds of the money appropriated, which amounted to about £800 a-year. The teachers were subject to the same legal provisions and enjoyed the same privileges as parochial teachers. By the Highland Schools Act, 1873 (which will be found in the Appendix, p. 314), this Act of 1838 is entirely repealed, and provision is made to cancel the existing investments under it, and charge the annual sums payable to the teachers under the Act upon the Consolidated Fund. The proviso in Sect. 78 of the Education Act referring to these schools is also repealed, and provision is made to enable the Treasury to pay over half-yearly to the school boards the sums payable to the teachers, and to cause the school boards to pay to existing teachers, so long as they remain in office, the sums payable to them.

These four Acts will be found in the Appendix, pp. 344-364.

PART II.

THE EDUCATION (SCOTLAND) ACT, 1872.

WITH NOTES AND REFERENCES
TO DECISIONS.

PART II.

THE EDUCATION (SCOTLAND) ACT, 1872.

35 & 36 VICTORIA, CHAPTER 62.

An Act to amend and extend the provisions of the Law of Scotland on the subject of Education.— [*6th August* 1872.]

WHEREAS an Act was passed by the Parliament of Scotland, in the First Parliament of King William, in the year one thousand six hundred and ninety-six, intituled "Act for settling of Schools." Act of 1696.

And whereas another Act was passed in the session of the forty-third year of the reign of His Majesty King George the Third, chapter fifty-four,[1] intituled "An Act for making better "provision for the Parochial Schoolmasters, and for making "further regulations for the better government of the Parish "Schools, in Scotland;" and another Act was passed in the session of the first and second years of the reign of Her present Majesty, chapter eighty-seven,[2] intituled "An Act to "facilitate the foundation and endowment of additional "Schools in Scotland;" and another Act was passed in the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter one hundred and seven,[3] intituled "The Parochial and Burgh Schoolmasters "(Scotland) Act, 1861:" 43 G. 3. c. 54. 1 & 2 Vict. c. 87. 24 & 25 Vict. c. 107.

And whereas it is desirable to amend and extend the provisions of the law of Scotland on the subject of education, in

A.D. 1872 such manner that the means of procuring efficient education for their children may be furnished and made available to the whole people of Scotland:

And whereas it has been the custom in the public schools of Scotland to give instruction in religion to children whose parents did not object to the instruction so given, but with liberty to parents, without forfeiting any of the other advantages of the schools, to elect that their children should not receive such instruction, and it is expedient that the managers of public schools shall be at liberty to continue the said custom:[4]

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

[1] Act of 1803. [2] Act of 1838. [3] Act of 1861.
[4] Cf. Conscience Clause, Sect. 68, p. 98.

Interpretation of Act:

1. In this Act the following words and terms shall have the meanings hereby assigned to them, viz.:

"Parish:" "Parish" shall mean any parish which does not wholly consist of a burgh or part of a burgh within the meaning of this Act,[1] and shall include any school district[2] formed under this Act:

"Burgh:" "Burgh" shall mean any royal burgh, and any burgh or town returning or contributing as a burgh to return a member to Parliament, and shall include every town, whether a burgh or not, specified in the schedule of towns appended to this Act:[3]

"Scotch Education Department:" "Scotch Education Department" shall mean the Lords of any Committee of the Privy Council appointed by Her Majesty on Education in Scotland:[4]

"The Board of Education:" "The Board of Education" shall mean the Board of Education for Scotland established by this Act:

"Her Majesty's inspectors:" "Her Majesty's inspectors" shall mean the inspectors of schools appointed by Her Majesty on the recommendation of the Scotch Education Department;[5] and "subject to inspection" shall mean subject to be inspected by the said inspectors, or any of them:[6]

"Parliamentary grant:" "Parliamentary grant" shall mean a grant made in aid of a school out of moneys provided by Parliament for the civil service, intituled "for public education in "Great Britain:"[7]

"Parent:" "Parent" shall include guardian and any person who is liable to maintain or has the actual custody of any child:[8]

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"Parish school" shall include any school established under the recited Acts,[9] or any of them, and any school established under this Act by the school board of a parish, or which is by this Act vested in and placed under the management of the school board of a parish: "Parish school:"

"Burgh school" shall include any school to which that term is now legally applicable, although it may be called an academy, or a high school, or a grammar school, or any other name, and any school established in a burgh by the school board thereof, or which is by this Act vested in and placed under the management of the school board of a burgh:[10] "Burgh school:"

"Public school" shall mean any parish or burgh school or any school under the management of a school board established under this Act:[11] "Public school:"

"Teacher" shall include schoolmaster, schoolmistress, assistant teacher, pupil teacher, sewing mistress, and every person who forms part of the educational staff of a school. "Teacher."

[1] The area of parish shall, for the purposes of this Act, be exclusive of the area of any burgh, or part of a burgh, situated therein, for which a school board is required to be elected. Sect. 9.

[2] School districts are formed by two or more school boards of adjacent parishes detaching portions from their parishes, and uniting them into districts. Sect. 17.

[3] The area of a burgh shall be taken to be the limits within which the municipal, or where there are no municipal, then within which the police, assessments thereof are levied. Sect. 9.

Burghs with a population under 3000 may be united to parishes. Sect. 11.

[4] Communications should be addressed to "The Secretary, Scotch Education Department, Whitehall, London, S.W."

[5] Inspectors are nominated by the Lord President of the Council. A list of H.M. Inspectors, with the districts assigned to them, will be found in the Appendix, p. 389.

[6] Denominational inspection ceases at the passing of this Act. Cf. Sect. 66.

[7] Cf. Sect. 67, note. Building grant is included in this definition.

[8] This definition includes father and mother, and failing them the ascendants on the father's side would be included, and failing them the ascendants on the mother's side.

[9] By this definition, parish, side, Parliamentary, and heritors' girls' schools are included. Cf. Summary, p. 13.

[10] Cf. Selkirk Parish School Board *v.* Selkirk Burgh School Board, p. 171.

[11] "Public elementary school" in England, means a school in receipt of Parliamentary grant, whether provided by and under the management of school board or not.

"Public school" in Scotland, means only a school board school. Denominational schools may receive Parliamentary grants in Scotland; but they are not considered to be public schools.

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Expenses of Scotch Education Department.

2. The salaries of the officers and servants of the Scotch Education Department shall be fixed with the consent of the Lords of Her Majesty's Treasury, and shall, together with the whole expenses of the said Department, be defrayed out of moneys voted by Parliament.

Board of Education for Scotland.

3. With a view to greater efficiency and convenience in the institution and organisation of schools and school boards under the provisions of this Act, a Board of Education for Scotland [1] shall be and is hereby established, to endure for the term of three years from and after the passing of this Act, with power to Her Majesty, by Order in Council made before the expiration of that term, to extend the same for a further period of not more than two years; and with respect to the constitution of the said board the following provisions shall have effect:

[1] As the Bill was framed and introduced, no provision was made for the establishment of a Board of Education. Power was given to the Department to appoint "officers" in Scotland, to perform such duties as should be performed in Scotland. The Scotch representatives, however, pressed upon the Government their desire to establish a Board; and the Government, while declining to sanction the creation by statute of an irresponsible permanent board, consented to the appointment of a temporary organising Board, responsible to the Scotch Education Department, to assist the school boards in starting the measure.

Board of Education. In 1875 the period was extended for two years, and in 1877 for one year more. In 1878, the extended periods having expired, the Board of Education ceased to exist, and the powers and duties devolved upon the Department in accordance with this provision. Cf. note, p. 6.

(1.) The board shall consist of five members to be appointed by Her Majesty, to hold office during Her Majesty's pleasure. Any vacancy occurring during the subsistence of the board shall be supplied by a new appointment. One of the members shall be nominated by Her Majesty to be chairman of the board, and with power to him to appoint any other member to be deputy chairman, and in the absence of the chairman and deputy chairman at any meeting of the board, the members present may nominate one of their number to act as chairman of the meeting. Two members shall be a quorum.

(2.) The office and general place of business of the board shall be in Edinburgh.

(3.) Her Majesty shall appoint a fit person to be secretary

of the board to hold office during Her Majesty's pleasure, and the board shall appoint such necessary clerks and officers as shall be sanctioned by the Lords of Her Majesty's Treasury, to hold office during the pleasure of the board.

(4.) The board may from time to time appoint any one or more of their number to perform special duties connected with the execution of this Act, and to visit such places as may be necessary for that purpose, and in the performance of their duties the member or members so appointed shall be responsible to the board and subject to their control.

(5.) The ordinary meetings of the board shall be held in Edinburgh, and it shall be the duty of the chairman or some other member of the board, as may from time to time be arranged, and of the secretary to give regular attendance in the office of the board at ordinary business hours during at least nine months in the year, unless when absent on the business of the board or prevented by reasonable cause.

(6.) The board and the members thereof shall be responsible to the Scotch Education Department, and on the expiration of the original or extended term of their endurance their powers and duties shall devolve and are hereby devolved upon the said Department, and thereafter the various clauses and provisions of this Act in which the term "Board of "Education" occurs shall be construed and have effect as if the term "Scotch Education Depart-"ment" were substituted therefor.

Meeting of the Board.

4. The first meeting of the Board of Education shall be held in Edinburgh on the third Friday of October one thousand eight hundred and seventy-two, or on such other day thereafter as shall be appointed by the Scotch Education Department, and at such place in Edinburgh as the said department shall appoint. Subsequent meetings shall be held at such times and places as the Board shall direct. Ordinary meetings shall be held in the office of the Board (except during the months of August and September), at intervals which shall not without reasonable cause exceed one month, and special meetings may be held at any time according to the pleasure of the Board. Any meeting may be adjourned.

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Board to frame draft minute as to distribution of parliamentary grant.[1]

5. The Board of Education shall submit for the consideration of the Scotch Education Department the conditions according to which, in their opinion, Parliamentary grants may be most advantageously distributed in Scotland: Provided always, that the duty of determining from time to time the rates and conditions according to which the said grants may be given under the provisions of this Act, and of framing and from time to time revising the minutes containing the same, shall be upon the Scotch Education Department.

[1] The rubric to this section is incorrect. As the Bill passed the House of Lords, the duty of framing the code for the distribution of the Parliamentary grant was put upon the Board. The House of Commons altered this, and substituted the clause as it stands here. But the rubric seems to have escaped notice, and remains as it left the House of Lords. The words of the section are precise. The duty of the Board is limited to making suggestions for the consideration of the Department. The conditions and minutes in accordance with which the grant will be distributed are to be determined and framed by the Department.

Code.—By the Endowed Institutions (Scotland) Act, 1878, Sect. 11, the authority to suggest conditions under which Parliamentary grants for higher instruction should be distributed in Scotland has been vested in the Commissioners appointed under that Act, in place of the Board of Education.

Board to make record of their proceedings, and to submit an annual report.

6. The Board of Education shall make a record of their proceedings, in which shall be entered minutes of all meetings held by them, or any committee appointed by them, and all resolutions passed and orders made by them, and all other matters which the Board may judge proper; and the Board shall, once in every year, submit a report of their proceedings under this Act, during the preceding year, to the Scotch Education Department, in order to its being laid before both Houses of Parliament.

Expenses of Board.

7. The chairman and two ordinary members and the secretary of the Board of Education shall have such salaries as may be assigned to them by the Lords of Her Majesty's Treasury, and the same, together with the whole expenses of the Board and of their establishment and reasonable travelling expenses, shall be defrayed out of money to be voted by Parliament.

Election of school boards.

8. Within twelve months after the passing of this Act a school board shall be elected in and for each and every parish[1] and burgh,[2] in accordance with the provisions of this Act.[3]

[1] and [2] For the constitution of school districts—*i.e.*, parishes, burghs, united parishes, and school districts—cf. Summary, p. 1-3.

[3] In committee of the House of Commons it was proposed to omit the words "parish and." The object being to exclude the parish schools from the operation of the Act, and to limit the establishment of school

boards to burghs, or to those parishes only where additional public school accommodation was required. In opposing this amendment, the Lord Advocate said that "some of the parish schools had been repre- "sented by the Education Commissioners as very excellent, but some "of them were discreditably and scandalously bad. . . . The people "of Scotland were resolved to have a sufficient number of efficient "schools for the education of their children. These must be main- "tained from three sources, Parliamentary grants, fees paid by pupils, "and local rates. The natural managers for these schools were those "who contributed to the expenses. The ratepayers would be too large "a body to be managers, and therefore they must resort to the ex- "pedient of making the ratepayers the constituency to appoint from "their own number, or, *without limiting them to their own number*, to "appoint those in whom they had confidence, to make efficient pro- "vision for the respective parishes and burghs. . . . Nothing could "be more unreasonable or inconvenient than to have a dual system of "management; one system for existing rate-supported schools, and an- "other for new rate-supported schools. The best system of manage- "ment for the latter — that, namely, by a popularly-elected school "board—must also be the best for the former. . . . With reference, "therefore, to all existing public rate-supported schools, as well as to all "those which should become so, the Government proposed that there "should be a school board elected in each parish by the inhabitants— "namely, by those who were chiefly interested in the matter of educa- "tion." The amendment was lost by a considerable majority, and no attempt was made in the House of Lords to reverse this decision. A.D. 1872

Area of a parish and area of a burgh.

9. The area of a parish shall for the purposes of this Act be exclusive of the area of any burgh or part of a burgh situated therein for which a school board is required to be elected, and the area of every such burgh shall for the purposes of this Act be taken to be the limits within which the municipal, or where there are no municipal, then within which the police assessments thereof are levied;[1] and any question or dispute regarding the area of any parish or burgh for the purposes of this Act shall be settled by the Board of Education, or by the sheriff of the county in which the same or the greater part thereof is situated, on an application by the school board authorised by the Board of Education, and the determination of the Board of Education or of the sheriff, as the case may be, shall be final.

[1] It was proposed to adopt the Parliamentary boundaries as the limits of the area of burghs, but this was not pressed.

Area of Parish.—There cannot be an educational parish partly burghal and partly landward. Cf. the following decisions:—Parish School Board of Selkirk *v.* Burgh School Board of Selkirk, p. 171; Burgh School Board of Renfrew *v.* Parish School Board of Renfrew, p. 156; and School Board of Lochgilphead *v.* School Board of South Knapdale p. 155. But compare Sect. 29 and 30 of Act of 1878, with these decisions.

United parishes.

10. When two or more parishes or parts of parishes are now united, whether quoad omnia or quoad sacra, such united

A.D. 1872 parishes or parts of parishes shall for the purposes of this Act be esteemed one parish.[1]

[1] Two or more entire parishes united together, either for civil or for Church purposes, are esteemed one parish for school purposes. A parish made up for Church purposes of parts detached from two or more civil parishes is esteemed a parish for school purposes, and is entitled to a separate school board.

Annexations whether quoad omnia or quoad sacra are parts of the parishes to which they are annexed. Cf. opinion of counsel on Friockheim case, p. 157; also, First Report of Board of Education, p. 110.

Burghs may be united with parishes in certain cases.

11. It shall be lawful for the Board of Education, within six months after the passing of this Act, to order that any burgh with a population not exceeding three thousand shall be dealt with under this Act, and for the purposes thereof, as part of the parish in which the same or the greater part thereof is situated; and every such order shall be final, and shall not be questioned on the ground of any error in estimating the population of the burgh, or on any other ground.

The school board of such united parish have all the rights of a parish and of a burgh school board, and are entitled to the school buildings and customary contributions. Cf. School Board of Peebles *v.* Magistrates of Peebles.

First election of school boards.

12. The first election of school boards shall take place and be conducted in accordance with the following provisions:

(1.) The number of members of a school board[1] shall be such number, not less than five and not more than fifteen, as may be determined by the Board of Education with respect to each parish and burgh:

[1] *Members of School Board.*—An inspector of the poor cannot act as member of school board. Cf. Clark *v.* Board of Supervision, p. 157. It is illegal for a candidate to act as presiding officer, Ronaldson *v.* Brown, p. 254.

(2.) The electors[2] shall consist of all persons being of lawful age, and not subject to any legal incapacity whose names are entered on the latest valuation roll[3] applicable to the parish or burgh for which the board is to be elected, made up and completed not less than one month prior to the election, as owners or occupiers of lands or heritages[4] of the annual value of not less than four pounds, situated within such parish or burgh, and the valuation roll, or a certified copy thereof, shall be conclusive evidence that the

persons therein named had and continue to have the qualifications annexed to their names respectively in the said roll: A.D. 1872

Electors.[2]—As to who are and who are not entitled to vote. Cf.
Edinburgh Case, opinion of counsel, p. 158.
Ramsay *v.* Craig (married women), p. 158.
Luke *v.* M'Ara (partner of company), p. 159.
Dodds *v.* Notman (description of voter), p. 159.
Wright *v.* Smeaton (returning officer), p. 160.
Findlay & Stewart *v.* Gemmill (errors in valuation roll), p. 160.
Petition M'Neish (errors in valuation roll), p. 160.
Petition Duncan (errors in valuation roll), p. 160.
Hay *v* Kippen (errors in valuation roll), p. 160.
Macintyre *v.* Corbet (errors in valuation roll), p. 161.
Ramsay *v.* Craig, 2d case (trustee), p. 159.

[3] The valuation roll is made up under the authority of the Act of 17 & 18 Vict. c. 91 (1854). It contains in a tabulated form the following particulars—

1. The name or description of the subject.
2. The name of the proprietor.
3. The name of the tenant.
4. The name of the occupier.
5. The yearly rent or value.

The roll is prepared by an assessor appointed by the Magistrates in burghs and by the Commissioners of Supply in counties. The roll is prepared every year by the 15th of August; by the 25th every person has received a copy of the entry relating to himself if there is any change from the entry of the previous year. The entry may be corrected before September 8, when the roll is transmitted to the Town Clerk in burghs, and the Clerk of Supply in counties. Appeals may be made to the Magistrates or Commissioners of Supply between the 10th and 15th of September, and all appeals must be disposed of by the 30th September. Appeals lie from these courts to the supreme court. When all appeals are disposed of, and the roll authenticated, it "shall be in "force as the valuation roll of the county or burgh, as the case may be, "for the year commencing at the term of Whitsunday immediately pre-"ceding, and ending at the term of Whitsunday immediately following." The Clerk of Supply or Town Clerk is bound to furnish without fee to the clerks of the several parochial boards within the county or burgh a copy of so much thereof as relates to their respective parishes.

By Sect. 25 of the Act of 1878, clerks of school boards, or other persons authorised by school boards, can have access to the valuation rolls applicable to their districts free of charge.

[4] Lands *or* heritages.—The expression in the Act of 1854 is "lands "*and* heritages." It extends to and includes by definition—
Lands and houses.
Shootings, Deer forests } actually let.
Fishings
Woods, copse, and underwood from which revenue is actually derived.

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Ferries.
Piers, harbours, quays, wharfs, or docks.
Canals.
Railways.
Mines, minerals, and quarries.
Coal-works.
Water-works.
Lime-works.
Brick-works.
Iron-works.
Gas-works.
Factories, and all buildings and pertinents thereof, and all machinery fixed or attached to any lands or heritages; provided always, that no mine or quarry shall be assessed unless it has been worked during some part of the year to which such assessment applies.

(3.) In each parish the heritors and minister who under the law as existing at the passing of this Act have the management of the parish school and the appointment of the parish schoolmaster shall, as soon as conveniently may be after the publication of the rules and directions for the conduct of first elections of school boards to be issued as herein-after directed by the Board of Education, meet and fix a time and place for the election of a school board, and appoint a fit and proper person to be returning officer[5] at the election, and shall make due publication of the time and place so fixed and of the person so appointed, and transmit written intimation thereof to the Board of Education; and should such heritors and minister in any parish fail for three months after the publication of the rules as aforesaid to perform the duty hereby assigned to them, and to make intimation as aforesaid to the Board of Education, the said Board shall require the sheriff of the county to perform the said duty, and he shall perform the same accordingly:[6]

[5] *Returning officer.* — A professional man employed as returning officer may make professional charges. Downie *v.* School Board of Annan, p. 250. When returning officer has rendered election invalid he will be found liable in expenses. Armour *v.* Miller, Wright *v.* Smeaton, p. 166. Cf. also Panbride Case, opinion of counsel, p. 168.

[6] Cf. Ronaldson & Brown, p. 167.

(4.) In each burgh having a town council, the town council, and in each burgh not having a town council, the bodies specified with respect to such burghs respectively in the schedule of towns hereto annexed,[7] shall, as soon as conveniently may be after the publication of the rules and directions for the conduct

of first elections of school boards, to be issued as herein-after directed by the Board of Education, meet and fix a time and place for the election of a school board, and appoint a fit and proper person to be returning officer at the election, and shall make due publication of the time and placed so fixed, and of the person so appointed, and transmit written intimation thereof to the Board of Education; and should such town council, or such bodies specified in the said schedule of towns, fail for three months after the publication of the rules as aforesaid to perform the duty hereby assigned to them and to make intimation as aforesaid to the Board of Education, the said Board shall require the sheriff of the county to perform the said duty, and he shall perform the same accordingly: A.D. 1872

[7] Schedule A. of the Act, p. 106.

(5.) Within six months after the passing of this Act the Board of Education shall frame and issue such rules[8] and directions as may be necessary for the conduct of the first election of school boards, and such rules and directions shall be published in the Edinburgh Gazette, and shall have the same validity and effect as if the same had been hereby enacted, and all first elections of school boards shall be conducted in accordance therewith.

[8] *Rules.*—For decisions and opinions interpreting the rules, cf. pp. 250-259.

At every election every voter shall be entitled to a number of votes equal to the number of the members of the school board to be elected, and may give all such votes to one candidate, or may distribute them among the candidates, as he sees fit.

No teacher of a public or State-aided[9] school in any parish or burgh shall be eligible as a member of a school board under this Act.[10]

[9] *State-aided.*—This word is not defined; but it has been held to include not only schools in receipt of annual grant, but also schools built by Treasury aid though no longer in receipt of annual grant nor under inspection. Cf. Findlay & Stewart, *v.* Gemmill, p. 161.

[10] All expenses incident to the election of a school board—except the expenses of candidates or members—are to be paid out of the school fund. Cf. Sect. 43.

Time for elections subsequent to

13. Each school board elected under the provisions of this Act shall remain in office until a new election shall take place as herein-after provided, and the time for every elec-

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the first to be appointed by the Department.

tion subsequent to the first shall be appointed by the Scotch Education Department, having regard to the circumstances and convenience of the locality in which the election is to take place, and so that so far as practicable and convenient there shall be an election in each parish and burgh for which a separate school board is appointed to be elected once, and not oftener, in every period of three years, and that each school board shall remain in office for three years, and no longer; and it shall be lawful for the said Department to appoint the time or times for the elections subsequent to the first in each parish or burgh by general order, which shall subsist until a new order shall be made; and the school board in office shall, a convenient time before the time so appointed for the next election, take such steps as they shall deem necessary, or as shall be directed by the said Department, for the election of a new school board accordingly; and should any election not take place as required by this Act, and at the times herein-before specified, the Scotch Education Department may issue an order for an election at such time and place as the said department shall determine, or may allow the existing school board to continue in office, or may nominate a school board for the parish or burgh in which the failure has occurred, in the manner herein-after provided with respect to any parish or burgh which on the expiration of twelve months from the passing of this Act shall be without a school board, and any board so nominated shall continue in office for the same period as a board elected under this Act at the time when the failure occurred, and shall have all the powers and be required to perform all the duties of a board so elected; and should a vacancy occur in any board during the currency of its period of office, such vacancy shall be supplied by the board itself nominating a person to supply such vacancy, and every person so nominated shall go out of office at the same date as the school board.

By Sect. 26 of the Act 1878, and the schedule of the Act, it is provided that the triennial elections both in parishes and burghs are to be held at such time, and in such manner, and in accordance with such regulations, as may be prescribed by the Department.

The Department are authorised to appoint officers to conduct the elections; and they are, farther, to make rules as to the duties, remuneration, and expenses of the elections; and they are generally to regulate the elections.

Determination of questions regarding the elec-

14. The candidates having the majority of votes at any election, whether the first or any subsequent election, shall be elected, and in every case of equality the returning officer [1] shall determine which candidate is to be deemed duly elected.

Any question or dispute regarding the election of a candidate shall be summarily determined by the sheriff of the county on the petition of any person interested having a legal title and interest to raise such question, and the determination shall be final; and unless and until the sheriff shall otherwise determine, the school board shall be deemed to consist of the members who have been declared by the returning officer to be elected, and the acts and proceedings of such board shall be deemed to be valid accordingly, and no subsequent declaration or finding that any member was not duly elected shall affect the validity of the acts and proceedings of the boards in which such member may have taken part. A.D. 1872 — tion of school boards.

[1] The returning officer at *first* elections in parishes is to be appointed by the heritors and minister: in burghs and towns by the town councils or bodies specified in Schedule A.

At *subsequent* elections the chairman of the school board is returning officer, or, failing him, some person appointed by the school board. Cf. Schedule B. Sect. 3, p. 107.

Determination of Questions regarding Elections.—For decisions upon this section, cf. pp. 162-166.

15. In case the election of any person or persons shall be declared to be invalid, and the full number of members shall not without such person or persons, have been validly elected, the school board, if a quorum[1] exist, shall nominate and appoint a person or persons to be a member or members of the school board in room and place of such person or persons whose election has been declared to be invalid,[2] and if a quorum do not exist, or if the school board fail for three weeks to make such nomination and appointment as aforesaid, the Board of Education may order a new election of as many members of the school board as shall be necessary to make up the full number of members; and all persons who shall be so nominated and appointed by the school board shall be deemed and taken to be duly elected members of the school board. Invalid elections.

[1] Three members of the school board are a quorum. Cf. Sect. 21.

[2] *Invalid Elections.* — When the election of a candidate is declared invalid the school board ought to nominate a member. Findlay *v.* Gemmill, p. 166.

Contra.—The sheriff may take the candidate who received the next highest number of votes to those returned. Ronaldson *v.* Brown, p. 167. Cf. also Hope *v.* Mackintosh, p. 167.

16. Notice of the election of a person to be a member of a school board shall be sent to that person by the returning officer, together with a notice to attend the first meeting of the school board, at the prescribed time and place; and the Notice of election to be sent by returning officer.

A.D. 1872 time and place of the first meeting shall be announced[1] at the time of declaring the election, and the time shall be not later than fourteen days after the date of the election.

[1] The time and place of meeting should be announced by the returning officer.

As to small parishes and school districts.

17. If the Board of Education are of opinion that any parish is too small, or contains too few inhabitants to be entitled to act as a separate parish for the purposes of this Act, they may by order direct that it shall for the purposes of this Act be added to an adjacent parish, and thereupon it shall for these purposes be deemed to be part of the parish to which it is so added.[1] It shall be lawful for any two or more school boards of adjoining parishes, with the consent and approbation of the sheriff of the county in which such parishes or any of them are situated to separate and detach from the parishes of which they are the school boards, such portion or portions of such parishes respectively as they shall deem it expedient to unite together and form into a school district, and to form the same into a school district accordingly.[2]

[1] And will of course bear a due proportion of assessment. Cf. Sect. 44.

[2] In the Report of the Assistant Commissioners for the county districts of Scotland (p. 17), the importance of establishing district schools by two or more parishes combining in the manner provided in this section, is urged. As an instance of the sort of combination which might take place under this section, the following passage may be quoted:—

"High up among the hills, some five miles from Fintry village, there "is a district with a considerable population not altogether in the parish "of Fintry, but extending over the reverses of the parishes of St "Ninian's, Denny, Kilsyth, and Fintry. These four parishes meet "in the basin of the Carron, and here there is a population eager for "education, but from five to seven miles distant from any school. . . . "A district school for these parishes would be of great value. Whether "the erection of such schools should fall upon the heritors of the dif- "ferent parishes, . . . or whether they should be erected by means "of rates collected from the inhabitants of the district, and be managed "by the inhabitants, would be subject for consideration. But some- "thing outside the parochial system is wanted in such exceptional "districts."—P. 18.

When a school district has been formed under this provision, a school board must be elected for it. The Board will lay down the rules in accordance with which *first* elections of school boards to such school districts will be conducted in the Rules and Directions for the election of school boards, which they are to frame and publish under Sect. 12, subsect. 5.

This section (17), being optional, is said to have been almost entirely inoperative, although the formation of such districts would greatly have promoted both efficiency and economy. Cf. *Fourth Report of Board*, p. xiv.

Election of a school board in a burgh for which a school board has not previously been elected.

18. It shall be lawful for the Board of Education at any time, but not before the lapse of three years after the passing of this Act, and from time to time thereafter, to order that a school board shall be elected for any burgh or town for which a school board has not previously been elected, and to frame and issue all proper rules and directions for carrying such order into execution, and from and after the period specified in the order such burgh or town shall, according to the limits thereof as specified in said order, cease for the purposes of this Act to be included in the area of the parish in which it is situated, and shall be esteemed to be a burgh within the meaning and for the purposes of this Act, and a school board shall be elected therefor accordingly in pursuance of the order.

Parish school board may include burgh school board. Time for making such alterations.

19. It shall be lawful for the Board of Education at any time, but not before the lapse of three years after the passing of this Act, and from time to time thereafter, to order that any burgh or town for which a school board has been elected shall, from and after a time to be specified in such order, cease to have a separate school board, and shall for the purposes of this Act be included in the area of the parish in which it is situated, and be subject to the school board of such parish. Any order made by the Board of Education in pursuance of the powers conferred by this and the two preceding sections shall, when no urgent reason to the contrary exists, be so framed as to come into operation at the next ensuing general election of a school board for the locality in which it is to have effect.[1]

[1] In the case of Annan, both parish and burgh were in favour of amalgamation. The terms of the order (21st January 1876) will be found in the Fourth Report of the Board, Appendix xvi., p. 414.
Applications from Bathgate, Campbeltown, Dalkeith, Girvan, Haddington, Kilsyth, Linlithgow, and Renfrew were refused, as in each case the parish objected.

Nomination of school boards after the expiration of twelve months.

20. If on the expiration of twelve months from the passing of this Act any parish or burgh shall be without a school board elected in pursuance of this Act, the Board of Education shall nominate a school board[1] for such parish or burgh, and the school board so nominated shall, during the period of one year from the date of nomination, and thereafter until a school board shall be elected in pursuance of this Act, have all the powers, and be required to perform all the duties by this Act imposed on and required of a school board duly elected; and the first meeting of a school board so nominated

A.D. 1872 shall be held at such time and place as may be directed by the said Board of Education.

[1] In England, when the Education Department nominate a school board, they may, under Sect. 65 of the Elementary Education Act, 1870, assign them remuneration, and this remuneration must be paid out of the school fund.

School boards shall appoint chairman.

21. Every school board shall at the first meeting after their election appoint one of their number[1] to be chairman during the school board's tenure of office; and should the chairman be absent from any meeting of the school board, the members present shall appoint one of themselves to be chairman of the meeting; and should a vacancy occur in the office of chairman during the currency of the school board's tenure of office, it shall be supplied by a new appointment; and at every meeting the chairman shall have a deliberative, and also, in cases of equality, a casting vote;[2] and three members of the school board shall be a quorum.

[1] Of their number.—These words do not occur in the analogous provisions in the English Act, and questions have arisen as to whether the chairman must be necessarily a member of the school board. No such question can arise under this section. In England, "in the case of one school board, a lady has been elected chairman."—*Owen's Manual.*

[2] In the third schedule of the English Act the following provisions occur:—

"*e.* Every question shall be decided by a majority of the votes of the "members present and voting on that question.

"*f.* The names of the members present, as well as of those voting "upon each question, shall be recorded.

"The presiding chairman is entitled to have his vote on any question "recorded in the same manner as any other member of the board present "at the meeting, and if the votes are then found to be equal, he will "be entitled to give a second or casting vote. If the chairman has "not already voted, and the votes are found to be equal, he may give "his casting vote. When the chairman intends to vote on a ques- "tion (irrespective of his casting vote), he should give his vote before "declaring the numbers voting for and against the motion."—*Owen's Manual.*

There is no provision to enable members of school boards to vote by proxy.

Election of chairman.—The election of chairman at the first meeting of a school board is a matter of direction, but not imperative. Cf. Torthorwald Case; opinion of counsel, p. 169.

Resignation.—A member of a school board may resign for a reasonable or necessary cause. The chairmanship may be resigned. Cf. Hamilton Case; opinion of counsel, p. 168.

In the Peterhead Case it was the opinion of counsel that a school board could not compel their chairman to resign. The Court of Session might, on a strong case, supersede a member or chairman.

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By Sect. 15 of the Act of 1878, members are enabled to resign on giving a month's notice in writing to the school board. The board may nominate a successor, but if they fail to do so for eight weeks, the Department may take steps to fill up the vacancy. Cf. p. 129.

By Sect. 16, non-attendance for six successive months disqualifies.

By Sect. 17, power is given to the Department to supply the deficiency when a quorum ceases to exist in any school board, p. 129.

School board declared to be a body corporate.

Managers.

22. The school board of every parish or burgh shall be a body corporate[1] by the name of the school board of such parish or burgh, and shall have perpetual succession, and power to acquire and hold land for the purposes of this Act; and it shall be lawful for any school board, from time to time as they see fit, to commit the management of any school under their charge, and to delegate any of their powers under this Act, except the power of raising money, to managers[2] appointed by them; such managers shall not be less than three in number, shall observe such rules, conditions, and restrictions as the school board shall from time to time prescribe, and shall all, or any of them, be removable at the pleasure of the school board, and may all, or any of them, resign on giving written notice to the school board.

[1] *As to citation.*—Cf. Harrison *v.* School Board of Tingwall.—Extracts of Minutes, p. 169. Cf. Paterson and Roy *v.* Bennet, p. 170.

[2] *Managers.*—Inspector of poor cannot act as manager. Cf. Clark *v.* Board of Supervision, p. 157.

Two or more school boards may elect the same managers.

In the third schedule of the English Act the following provision refers to managers:—

"Proceedings of managers appointed by a school board.

"The managers may elect a chairman of their meetings. If no such "chairman is elected, or if the chairman elected is not present at the "time appointed for holding the same, the members present shall choose "one of their number to be chairman of such meeting. The managers "may meet and adjourn as they think proper. The quorum of the "managers shall consist of such number of members as may be pre-"scribed by the school board that appointed them, or, if no number be "prescribed, of three members. Every question at a meeting shall be "determined by a majority of votes of the members present and voting "on that question; and in case of an equal division of votes, the chair-"man shall have a second or casting vote.

"The proceedings of managers shall not be invalidated by any vacancy "or vacancies in their number."

No one who holds an office of profit under a school board can act as manager under the board. Act of 1878, Sect. 21.

Parish schools.

23. The parish and other schools which have been established and now exist in any parish under the recited Acts, or

A.D. 1872 any of them, together with teachers' houses and land attached thereto, shall be vested in and be under the management of the school board of such parish, or if situated in a burgh, then of the school board of such burgh, unless such parish school is the parish school of the landward district of a parish partly landward and partly burgal, in which case it shall be under the management of the school board of such district from and after the election of such school board, and the said school board shall thereafter, with respect to school management and the election of teachers, and generally with respect to all powers, obligations, and duties in regard to such schools now vested in or incumbent on the heritors qualified according to the existing law and the minister of the parish, supersede and come in the place of such heritors and minister; and all jurisdiction, power, and authority possessed or exercised by presbyteries or other church courts with respect to any public schools in Scotland are hereby abolished:[1] Provided that nothing in this section contained shall defeat or prejudice any right or title to the land whereon any such school or teachers' houses shall be built, other than that of the heritors or others being managers of such school, or shall defeat or prejudice any charge, burden, or liability to which such land or houses may be subject.

[1] By this section the parochial, side, parliamentary, and heritors' girls' schools are transferred from the heritors and vested *ipso facto* in the school boards as soon as they are elected, and all connection between these schools and the parish minister, the presbyteries, and the Church courts is severed. The heritors, as such, are, after the current year, relieved of all parochial burdens for the support of these schools, though they will be liable as ratepayers, and as ratepayers they will be assessed according to the real, and not the valued, rent. The parish ministers and the presbyteries are relieved from the statutory duty of superintending the parish and other schools. The ministers may, and probably will in many cases, be elected to the school boards, and frequently will be appointed managers. But all *ex officio* management of the schools is abolished.

The words, "and generally with respect to all powers, obligations, and "duties in regard to such schools now vested in or incumbent on the "heritors qualified according to the existing law, and the minister of the "parish," were inserted in the House of Lords. The statutes prescribing the powers, obligations, and duties, are the Acts of 1696, 1803, 1838, and 1861. These Acts will be found in the Appendix. By the Act of 1803 power is given to the heritors to send poor children to the parish schools without fees. An ineffectual attempt was made in Committee to have this power retained.

For the interpretation of this section cf. the following cases:—

School Board of Peebles *v.* Magistrates of Peebles (burgh as part of parish), p. 170.

School Board of Parish *v.* School Board of Burgh of Selkirk (parish partly burghal partly landward), p. 171.

School Board of Caerlaverock *v.* Hutton's Trustees (school board partly maintained by charitable trust), p. 173.
Stewart *v.* School Board of Little Dunkeld (proprietary school on entailed estate), p. 173.
Straiton Case; opinion of counsel—(Second parish school), p. 174.
Avondale Case do. (Chapel school), p. 175.
Girthon Case do. (Transference of teachers' houses, or equivalent), p. 174.
Holm Case do. (Right to demand transfer), p. 175.

As to right of school board to visit school, cf. School Board of Kelso *v.* Hunter, p. 176; and Marshall *v.* School Board of Ardrossan, p. 177.
The school building must be used only for educational purposes. Lawson *v.* School Board of Kettle, p. 178.
For liability of school building to local assessment, cf. A. & B., p. 178.

Burgh schools.

24. Every burgh school shall be vested in and be under the management of the school board of the burgh in which the same is situated from and after the election of such school board, and the said school board shall thereafter, with respect to school management and the election of teachers, and generally with respect to all powers and duties in regard to such schools now vested in the town council and magistrates, or other authorities in whom the school management and the election of the schoolmasters and teachers is at present vested, supersede and come in the place of such town council and magistrates or other authorities.[1]

[1] By this section the burgh schools are transferred from the magistrates and town councils of their respective burghs, and vested *ipso facto* in the school boards of the burghs as soon as they are elected.
The burgh schools are of two kinds,—the ordinary public schools, and the higher class public schools. The former will be supported by fees, rates, and Parliamentary grant; the latter will be self-supporting. They will receive no aid from public funds except the expense of annual examination and the maintenance of school buildings. Cf. provisions as to higher class public schools, Sects. 62-64.
Teacher's house in burghs is transferred to school board, as well as the schoolrooms. Whyte *v.* School Board of Haddington, p. 178.
In royal burghs, probably also in baronies, the presbyteries were never able to assert any right of control under the Act 1693, Sect. 22. In other burghs, the right does not seem to have been much exercised. If it existed, it was not extinguished by the Act of 1861, but it must have been transferred by this section.

Public schools.

25. Every school under the management of the school board of a parish shall be deemed a parish school, and every school under the management of the school board of a burgh shall be deemed a burgh school, and all such schools are hereby declared to be public schools within the meaning of this Act; but nothing in this Act contained shall prejudice or

A.D. 1872 affect the right of the teacher of any existing parish school, which, under the operation of this Act, may be deemed to be a burgh school, or his successors in office, to participate in the benefits of any bequest for behoof of the teachers of parochial schools, or the powers, rights, and privileges of the trustees or administrators of any such bequests.[1]

[1] Cf. Summary, p. 14, note 2.

Supply of public school accommodation.

26. There shall be provided for every parish and burgh a sufficient amount of accommodation in public schools available for all persons resident in such parish and burgh for whose education efficient and suitable provision is not otherwise made, and when a sufficient amount of such accommodation is not afforded in any parish or burgh, it shall be the duty of such school board to supply the deficiency in the manner provided by this Act; and all public schools, whether existing at the passing of this Act, or subsequently supplied in manner provided by this Act, shall be vested in and shall be under the management of the school board of the parish or burgh in which they do or shall hereafter come to exist.[1]

[1] The provisions in this and the following clauses constitute the existing law according to which school accommodation is to be provided and maintained for the future throughout the whole of Scotland. The leading principle of these provisions is *local* as distinct from *central* initiative. The duty of taking the preliminary steps in establishing a system of public education rests primarily with the school boards, each school board working in its own locality. The management of the schools is left with the school boards, subject to the minimum of interference on part of the central authority. A controlling power is given to the central authority, and they have the means of compelling a recalcitrant school board to do their duty. But where the school boards appear to do their work efficiently, the central authority will probably leave them to themselves, or confine their interference to giving any advice that may be required. An ineffectual attempt was made in Committee to reverse this principle, and adopt that of the English measure, which gives the initiative chiefly to the central authority.

Supply of accommodation.—Cf. M'Lean *v.* School Board of Kilbrandon and Kilchattan, p. 180.

School boards to ascertain amount of school accommodation.

27. It shall be the duty of every school board first elected under this Act for any parish or burgh, as soon as conveniently may be after the election thereof, and of every subsequently elected school board from time to time as shall be reasonable, to ascertain and take into their consideration the educational requirements of such parish or burgh, and the extent and quality of the provisions for supplying the same by means of schools existing and in operation within, or so

situated as to be conveniently available for such parish or burgh;[1] and should the school board be of opinion that the requirements exceed the provisions for supplying the same, it shall be the duty of the school board to determine the extent to which, and the manner in which additional school accommodation ought to be and may most conveniently and advantageously be provided, so that there shall at all times be sufficient and available provision for the efficient education of all the children resident in such parish or burgh; and the school board shall forthwith report such opinion and determination to the Board of Education, and the report shall set forth all facts and circumstances which may be necessary to enable the said Board of Education to judge of such opinion and determination; and should any school board first elected under this Act be of opinion that the requirements are not in excess of the provisions, and that it is unnecessary to provide additional school accommodation, the school board shall report such opinion to the Board of Education, together with all facts and circumstances necessary to enable the said Board of Education to judge thereof; and a report in terms of the requirements of this clause shall be transmitted to the Board of Education by each school board first elected under this Act as soon as conveniently may be, and in no case later than nine months after the election of the school board.[1]

[1] "So situated as to be conveniently available for such parish or "burgh." These words are important, as indicating that the Legislature intended that there should be an economical distribution of schools throughout the country, and no unnecessary multiplication of schools in any parish or burgh. The same intention is indicated by the clauses providing for the formation of school districts (Sect. 17), and for the combination of school boards (Sect. 42).

Accommodation to be provided.

28. The Board of Education may approve of the opinion and determination of a school board with or without qualification or addition, or may direct a further report, or may direct an inquiry by officers or persons appointed by the said Board of Education; and should the said Board of Education approve, with or without qualification or addition, of the opinion and determination of the school board with respect to providing additional school accommodation, the same shall, without unnecessary delay, be acted upon and carried into effect by the school board accordingly; and should the said Board of Education see fit to direct that additional school accommodation be provided, although not determined upon by the school board, they shall have power to do so, and

A.D. 1872 their direction shall be acted on and carried into effect by the school board without unnecessary delay.[1]

[1] *Board of Education.*—Board of Education are entitled to decide not merely the extent of additional accommodation, but the manner in which it is to be provided. Cf. Carluke Case; opinion of counsel, p. 179.

Where circumstances alter, a school board ought to reconsider the question of accommodation, and submit their resolution to the Board of Education.

The Court will interfere with Board of Education only where they have gone outwith the statute, or have not applied their minds to the question of school accommodation. Lord Advocate *v.* School Board of Stow, p. 179. Cf. also Lord Advocate *v.* School Board of Strathmiglo, p. 180.

Where Board of Education have made inquiry, it is irrelevant to allege concealment by the school board in their opinion and determination. M'Lean *v.* School Board of Kilbrandon and Kilchattan, p. 180.

Inquiry may be ordered.

29. Should any school board first elected under this Act for any parish or burgh fail to transmit a report to the Board of Education within the period herein-before specified, and should such failure continue for one month after a requisition from the said Board of Education, or should the report of any school board be, in the opinion of the Board of Education, unsatisfactory, it shall be lawful for the said Board of Education to cause inquiry to be made by officers or persons appointed by the said Board of Education into the matters which, in the opinion of the said Board of Education, such report ought to have embraced, and thereupon to make and issue such orders and directions as they shall see fit with respect to providing additional school accommodation within the parish or burgh of the defaulting school board in the same manner and with the same force and effect as if a report had been made in terms of this Act, and the expense of such inquiry, as the amount shall be certified by the said Board of Education, shall be a charge upon and shall be defrayed by the defaulting school board, and in default of payment shall be recoverable as a debt due by such board.

Existing schools to be taken into account.

30. In considering and determining whether any and what amount of public school accommodation or additional public school accommodation is required for any parish or burgh, the school board and the Board of Education shall have regard to and take into account every school, whether public or not, and whether or not situated in the said parish or burgh, which, in their opinion, gives or will when completed give efficient education to and is or will when completed be suitable and available for the education of the children of such parish or burgh, or any portion of them; and every school board and the said Board of Education shall have

power to call upon all public officers[1] and upon all clergymen, teachers, and managers of schools for such information and for access to and delivery of all such documents as shall to the said school board and Board of Education respectively appear to be necessary to enable them to discharge their duties under this Act, and every such school board and the said Board of Education may from time to time appoint fit and proper persons to procure such information and inspect such documents, and also to enter, inspect, and examine all schools and school buildings, and scholars therein; provided that no school which is subject to inspection by one of Her Majesty's inspectors of schools shall be required to have its scholars examined by any other person.[2] A.D. 1872

[1] *Public Officers.*—On questions whether these words apply to Departments of Government, counsel are of opinion that they do not bind such Departments to supply information if they are unwilling to give it.

[2] This clause gives wide powers to school boards as, under the provisions contained in it, all classes of schools—denominational, subscription, proprietary, private adventure, girls' schools as well as boys' schools, &c.—may be visited and inspected by school boards if the managers desire to have them recognised as contributing to the efficient education of the school district. Without these powers school boards could not be held responsible for the proper discharge of their duties. But to prevent anything like vexatious interference on part of any school board, the words at the end of the clause, limiting the powers of inspection to H.M. Inspectors, were introduced mainly in the interest of Roman Catholic and Episcopalian school managers. Cf. School Board of Kelso *v.* Hunter, p. 176; also Marshall *v.* School Board of Ardrossan, p. 177.

In determining what schools are "suitable and available," school boards will consider such points as the following:—

1. The population of their school district. 2. The number of children of school age. One-sixth of the population may in a rough way be considered as of school age. 3. The situation of the schools and their proximity to each other. 4. The size and adaptability of the buildings. 5. The branches taught. 6. The fees charged. 7. The staff of teachers. The point to aim at is to have an efficient school, within at furthest three miles from any of the children resident in the school district.

In Highland parishes this point cannot be attained. But in most parishes, even in the Highlands, by taking care that schools are set up in suitable localities—*e.g.*, where several valleys meet, or at the junction of cross roads, or in the vicinity of ferries, provision can be made for nearly all the children resident in those parishes. Cf. provisions contained in Sect. 67 with respect to building grants in the Highlands.

Private adventure, denominational schools, and others, may be recognised as giving efficient education, although their teachers are not certificated, and although they will not conform to the conscience clause. But no Parliamentary grant can be given in respect of schools so conducted.

31. It shall be lawful for the Board of Education from

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time to time to require from any school board a return containing such particulars with respect to the schools and the number of children requiring education in any parish or burgh as the said Board of Education may from time to time specify, and every such requisition shall be obeyed by the school board to which it is addressed, and for that purpose the school board shall have power to call upon all such persons as are in the preceding clause mentioned for such information as may be necessary to enable them to make the required return.

Returns may be required from school boards.

Mode of obtaining returns.

32. The Board of Education shall supply to the school boards such forms as may be required for the purpose of obtaining returns; and the managers or principal teacher of every school required to be included in any return shall fill up the form, and transmit the same to the school board within the time specified in the form.

Proceedings on failure of school board to make returns.

33. If a school board fail to make any return required under this Act, the Board of Education may appoint a person or persons to make such return, and the person or persons so appointed shall for that purpose have the same power and authority as the school board, and the expense of making such return shall be recoverable as a debt due by the defaulting school board to the person or persons making the same.

Inquiry by inspectors.

34. The Board of Education may appoint any persons to act as inspectors of returns, and such persons shall inquire into the accuracy and completeness of any return made in pursuance of this Act, and into the efficiency and suitability of any school included therein, or which ought to have been mentioned therein, and inspect and examine the scholars mentioned therein. When there is no return, the inspector shall proceed as if there had been a defective return.

Refusal to fill up form and to admit inspectors.

35. If the managers or teachers of any school refuse or neglect to fill up the form required for the said return, or refuse to allow the inspector to inspect the school house or examine any scholar, or examine the school books and registers, or to make copies or extracts therefrom, such school shall not be taken into consideration among the schools giving efficient education.

Maintenance of schools by school boards, &c.

36. The school board of every parish and burgh shall maintain and keep efficient every school under their management, and shall from time to time provide such additional school accommodation as they shall judge necessary.

A school board may with the sanction of the Board of Education discontinue or change the site of any school under their management, and may sell and dispose of any land and

buildings connected with any school so discontinued or the site of which is so changed.[1] A.D. 1872

If at any time the said Board are satisfied that a school board of a parish or burgh have failed to maintain and keep efficient any school provided by them, or to provide such additional school accommodation as in the opinion of the Board is necessary to supply a sufficient amount of public school accommodation in the parish or burgh, the said Board may send them a requisition requiring them to fulfil the duty which they have so failed to perform; and the school board shall comply with the said requisition without undue delay, and if they fail may be summarily compelled to do so by the Court of Session on a petition and complaint at the instance of the Lord Advocate.[2]

[1] *I.e.*, any parish, side, parliamentary, or heritors' girls' school, or any burgh school, existing at the passing of the Act, and any school transferred to or under the management of a school board, may be discontinued or changed or sold. This power will probably be extensively used in Highland parishes—in the counties of Inverness, Argyle, Ross, Orkney and Shetland—where the existing school buildings are insufficient. The school boards in the country parishes of these counties can, with the sanction of the Board, sell these buildings; levy a 9d. rate; and get building grants for new schools under Sect. 67.

[2] Besides the cases already mentioned, and that of Kinloch-Rannoch, three complaints were presented to the Court by the Board of Education against school boards—viz., those of Stair, Fraserburgh, and St Fergus. In the last case the failure to provide accommodation was caused by the refusal of the chief heritor to give a site. No procedure took place.

Proceedings for providing schools.

37. In performing their duties under this Act, it shall be lawful for any school board to acquire by purchase or otherwise sites for schools, teachers houses and gardens, and to enter into contracts for the erection of schools and teachers houses thereon, and to have such schools and teachers houses erected, and also to acquire by purchase or to take on lease any existing schools[1] and teachers houses, together with any land used or suitable to be used in connection therewith, not being schools, houses, and land of the description to which the provisions of this Act in the two immediately succeeding sections, regarding the transference of existing schools, are applicable, and from time to time to improve, enlarge, and furnish any school of which they have the management, and all charges and expenses consequently incurred by them shall be paid out of the school fund. And for the purpose of the purchase by a school board of any land or building in pursuance of the provisions of this Act, the clauses of the Lands Clauses Consolidation (Scotland) Act, 1845, with

A.D. 1872 respect to the purchase of lands by agreement, shall be incorporated herewith, and the expression "the promoters of "the undertaking" in the said Lands Clauses Consolidation Act shall, for the purposes of this enactment, mean the school board of any parish or burgh.

[1] Proprietary and private schools can be sold and bought or leased under this section. The proprietor of a school might, if he so contracted, lease it to the school board for a term of years, and take it into his own hands at the expiration of the lease. Denominational and subscription schools can only be transferred. Schools which have been erected with the assistance of building grants from the Committee of Council cannot be sold, exchanged, or mortgaged, unless the consent of the Home Secretary has been given, or the amount of the grant repaid to the Treasury. Cf. provisions of the Act of 18 & 19 Vict. c. 131.

Proceedings for providing schools.—The court approved of a lease of a private trust school to school board, who undertook to give higher education, the trustees reserving power to nominate free scholars. M'Culloch *v.* Johnston's Trustees, p. 181.

A member of a school board is not entitled to feu land to the school board of which he is a member. Leith Case; opinion of counsel, p. 182.

Contra.—If the land-owning members abstain from voting in the matter. General Case; opinion of counsel, p. 183. Contracts to supply work or materials, entered into between a member of a school board and the school board are voidable at the instance of the school board, but not void. General Case; opinion of counsel, p. 183.

School board not entitled without sanction of Board of Education to sell superfluous land acquired, but not required, for a school site. Hart *v.* School Board of Auchterarder, p. 184. By the Act of 1878, Sect. 31, provision is made for the compulsory purchase of sites, and the Lands Clauses Consolidation (Scotland) Act, 1845, as amended by 23 & 24 Vict. c. 106, is incorporated with this Act.

Transference of existing schools, &c.

38. With respect to schools now existing or which may hereafter exist in any parish or burgh erected or acquired and maintained or partly maintained with funds derived from contributions or donations (whether by the members of a particular church or religious body, or not) for the purpose, or authorised by the contributors or donors to be applied for the purpose of promoting education; be it enacted, that it shall be lawful for the person or persons vested with the title to any such school, with the consent of the person or persons having the administration of the trusts upon which the same is held, to transfer such school, together with the site thereof and any land or teacher's house held and used in connexion therewith, to the school board of the parish or burgh in which it is situated, to the end and effect that such school shall thereafter be under the management of such board as a public school in the same manner as any public school under this Act, and it shall be lawful for the school board, with the sanction of the Board of Education, to accept of such trans-

ference, and on the same being made and accepted the said school, with the site and any land and teacher's house included in the transference, shall be vested in the school board, and the school shall thereafter be deemed to be a public school under this Act, and shall be maintained and managed by the school board, and be subject to all the provisions of this Act accordingly; and the existing teachers, if any, of such school may be continued as such teachers by the school board, and their continuance in office may be made a condition of the transference of the school to the school board; and when so continued such teachers shall be in all respects in the same position, and have the same rights and be subject to the same provisions, as teachers appointed by a school board under this Act to a public school of the same class as the school so transferred. And the use of the school-house at such times and for such purposes as shall not interfere with the use thereof under the provisions of this Act by the school board may also be made a condition of the transference thereof to the school board. A.D. 1872

Consent to transferences.

39. The consent of any number of persons having the administration of the trusts on which any school is held, to the transference of such school, with the site and house and land, if any, held and used in connexion therewith, to a school board under this Act, may be given by a majority of not less than two thirds of the persons having the administration of such trusts present at a meeting duly summoned for that purpose, and the transference may be effected by an ordinary disposition or other deed of conveyance by the person vested with the title, recorded in the register of sasines, and no stamp or other duty shall be exigible on such disposition or other deed; and the persons whose consent is hereby required need not be parties to the conveyance, and the validity of the transference and the title of the school board shall not be subject to challenge on the ground that the requisite consents were not duly given, unless such challenge shall be judicially made within six months after the recording of the deed of conveyance.

Transference of Schools.—The provisions in clauses 38 and 39 were framed chiefly to meet cases where the managers of Free Church or other denominational schools desire to transfer their schools to the school boards with the view of being relieved of the expense of maintaining them. The clauses do not *compel* the transference of these schools. They provide machinery by means of which any body of managers may divest themselves of their schools, and hand them over to the school boards, and so be relieved of all future liability for the support of them. The school boards cannot purchase these schools—they can only accept of them as a gift. But having got them, unless

A.D. 1872 precluded by the terms of the transference, the school board may sell them for what they will fetch.

The Lord Advocate in Committee said: "The 35th [now 38th] clause "was couched in general terms, but Scotch members knew very well "what schools it applied to. It was intended to apply, and did apply "chiefly, to schools established by the Free Church and United Presby- "terian Church. . . . These schools were undoubtedly established and "maintained by funds derived from contributions and donations, and "the contributors and donors of the funds resided all over Scotland, "from Maidenkirk to John o' Groat's. Therefore it would be practi- "cally impossible to hold a meeting of the subscribers, and to obtain "their sanction to any proceeding. They had committed the manage- "ment of the schools to managers in whom they had confidence, and it "was proposed to authorise those managers to transfer the schools to "school boards."

In order to carry out a transference under these clauses, the trustees must make the preliminary overtures, and take the first steps. They must get the sanction of a majority of two-thirds of the persons having the administration of the trust at a meeting duly summoned for the purpose; they must then make the best bargain they can with the school board in accordance with the conditions sanctioned in the section. The school board must then obtain the sanction of the Board, and the transference can be effected by an ordinary conveyance, on which no stamp-duty is eligible. It will be observed that the transference of the teacher along with the school, and the use of the schoolroom for other than teaching purposes, may be made conditions of transference. These words are inserted as indicating the sort of conditions which may be made. There is nothing to prevent trustees from making any other conditions not inconsistent with the provisions of the Act, that the school board and the Board will sanction.

On the question as to how contracts existing between the school managers and the teachers would be affected by a transference, the Lord Advocate stated that "the law on this matter was quite clear. A con- "tract subsists until it is legally terminated by the contracting parties. "Of course no managers would transfer their school without coming to "a satisfactory arrangement with the school board. There was nothing "in the clause compelling such transfer. But if the managers of a "school, who desired to transfer it, were under existing liabilities to- "wards their teachers, they would make satisfactory arrangements "before concluding such transfer."

Teachers transferred cannot compel the school boards to fulfil the contracts which they (the teachers) made with the school managers; but the school boards may do so if they like.

Stipulations for reversion, pre-emption, or restricted use must not be inserted in transfers under Sect. 38: but a reasonable servitude for lights or access may be.

A school board must not accept use of school by tolerance instead of lease.

The continuance of a school even when built with Government grant is entirely in the discretion of the managers. Free Church Case; opinion of counsel, p. 185.

A school dedicated to special purposes, or necessary for the execution of trust, cannot be transferred. Shedden's Case; opinion of counsel, p. 188.

Personal debts cannot be transferred. Shedden's Case; opinion of counsel, p. 188.

Sect. 38 does not authorise the transfer of money. Nairn Case; opinion of counsel, p. 189.

A portion of a trust estate may be transferred. Midcalder Case; opinion of counsel, p. 189.

In connection with Sect. 35, 38, & 39, and the opinions of counsel thereon, reference is made to the Free Church of Scotland School Properties Act 1878, which will be found in the Appendix, p. 317.

Establishment of infant and evening schools.

40. It shall be lawful for a school board to establish and maintain one or more infant schools for the instruction of children under seven years of age, and also one or more evening schools for the instruction of scholars above thirteen years of age; and for the purposes of such evening schools a school board may use any schoolrooms vested in them under this Act, or they may hire rooms suitable and convenient for the purpose; and it shall be lawful for a school board to build, purchase, or take on lease such premises as may be necessary for the accommodation of any such infant schools as they are hereby authorised to establish and maintain; and for this purpose they shall possess and be entitled to exercise any of the powers which are by this Act conferred upon school boards; and infant and evening schools established under this Act shall be deemed public schools.[1]

[1] The observations of the Education Commissioners upon Infant and Evening Schools, are worthy of the consideration of school boards. They are contained in the Second Report (1867), p. cxx-cxxix.

Establishment of industrial schools.

41. A school board of any parish or burgh may, with the consent of the Board of Education, establish and maintain therein certified industrial schools within the meaning of the Industrial Schools Act, 1866, and shall for that purpose have the same powers as they have for the purpose of providing sufficient public school accommodation for such parish or burgh; provided that the school board, so far as regards any such industrial school, shall be subject to the jurisdiction of one of Her Majesty's Principal Secretaries of State in the same manner as the managers of any other industrial school are subject, and such school shall be subject to the provisions of the said Act, and not of this Act.[1]

[1] Cf. Industrial Schools Act and note on Prevention of Crimes Act, 1871, Appendix, pp. 298 and 314.

It will be observed that no power is given to school boards to contribute money to an Industrial School, though this power is given in England to school boards, by Sect. 27 of the Elementary Education Act, 1870. The powers of a school board for the purpose of providing school accommodation, which, under this section, are applicable to the establishment and maintenance of an Industrial School, are those set forth in Sect. 37 and 45.

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Combination of school boards.

42. Any two or more school boards, whether of parishes or burghs, with the consent of the Board of Education, may combine and agree together for any purpose relating to public schools in such parishes and burghs, and in particular may combine and agree together for the purpose of providing, maintaining, and keeping efficient, schools common to such parishes and burghs, and for the employment of a teacher or teachers of special subjects in all or any of the public schools under their charge.[1]

[1] Ninety-seven applications were sanctioned up to December 31, 1876.

School fund.

43. The expenses of the school board, including those incident to the election thereof (but not including the expenses of any member or candidate), in any parish or burgh under this Act shall be paid out of the school fund. There shall be carried to the school fund all moneys received out of moneys provided by Parliament, or raised by way of loan, or otherwise received by the school board for the purposes of that fund, and not by this Act or otherwise specially appropriated, and any deficiency shall be raised by the school board as provided by this Act.[1]

[1] For summary of revenue and expenditure of school board, cf. Summary, pp. 20, 21.

Election Expenses.—The expenses of a complaint under Sect. 60 (1) which was dismissed as unreasonable, may be charged against the school fund. Greenlaw Case; opinion of counsel, p. 189.

Cf. also Downie *v.* School Board of Annan, p. 250.
Dodds *v.* School Board of Bathgate, p. 251.

Cf. Circular of the Department on Election Expenses, p. 451.

Expenses in connection with Higher Class Public Schools.—The Act of 1878 throws upon the school fund the expense of maintaining the school buildings of Higher Class Public Schools, and it authorises the payment out of the school fund of "such other "expenses for the promotion of efficient education [in the Higher "Class Public Schools] as are not provided for by the revenues "stated in Sect. 62 of the principal Act." This expenditure is subject to the sanction of the Department. Act of 1878, Sect. 17.

Cf. Circular of Department, p. 453.

Power to impose rates.

44. Any sum required to meet a deficiency in the school fund, whether for satisfying present or future liabilities, shall be provided by means of a local rate within the parish or burgh in the school fund of which the deficiency exists.

The school board of each parish and burgh shall annually and not later than the twelfth day of June in each year certify to the parochial board or other authority charged with the

duty of levying the assessment for relief of the poor in such parish or burgh the amount of the deficiency in the school fund required to be provided by means of a local rate, and the said parochial board or other authority is hereby authorised and required to add the same under the name of "school rate" to the next assessment for relief of the poor, and to lay on and assess the same, one half upon the owners and the other half on the occupiers of all lands and heritages, and to levy and collect the same along with the assessment for relief of the poor when that assessment is so imposed and levied, and to pay over the amount to the school board; and where any burgh, parish, or school district with a school board under this Act shall include two or more parishes or parts of two or more parishes having separate parochial boards under the Act of the eighth and ninth years of the reign of Her present Majesty, chapter eighty-three, the school board shall certify to the parochial boards of such parishes respectively the amount of the rate on each pound of rental which they shall lay on and collect as "school rate," along with their several assessments for the relief of the poor, within such burgh, parish, or school district for which the school board acts;[1] and any surplus of school rate which may arise in any one year shall be applied for the purposes of the succeeding year, and in like manner any deficiency which may occur in any year may be included in the assessment for the succeeding year; and should there be no assessment for the poor, or should that assessment not be laid one half on the owners and the other half on the occupiers of all lands and heritages within such parish or burgh, the school board shall be entitled and bound directly to assess for and levy the said school rate in the same manner as if it were poor's assessment duly authorised to be assessed and levied in the same manner, and for that purpose shall have all the powers and authorities of any parochial board or other authority with respect to assessing, levying, and collecting poor's assessment, and the school rate shall in all cases be levied and collected in the same manner as poor's assessment, and the laws applicable for the time to the imposition, collection, and recovery of poor's assessment shall be applicable to the school rate.[2] A.D. 1872

Cf. Summary, p. 221.

[2] For the interpretation of this section cf.—
Glasgow Case; opinion of counsel—(rate on owners and occupiers so as to approximate aggregate amount from each class,) p. 190.
Cargill Case; opinion of counsel—(cost of collection,) p. 190.
Brechin Case; opinion of counsel—(risk of recovery,) p. 191.

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Lindsay *v.* Inglis,
M'Laren *v.* Mackenzie,
Frazer *v.* Robb,
Anderson *v.* Smith,
} (liability of ministers,) pp. 191, 192.

Parochial Board of Annan *v.* Gourlay,
Maxwelltown Case; opinion of counsel—
General Case; " "
} (liability of ministers,) p. 193, *contra*.

Sandison *v.* Hunter (liability of teachers), p. 193.

Stewart *v.* Earl of Seafield,
Robertson *v.* Millar,
} (questions of relief under conveyances of land,) pp. 194, 195.

Lindsay *v.* Semple (season tenant), p. 194.

A. *v.* Marshall (religious instruction), p. 195.

Hall *v.* M'Caig (preference of school rates in sequestration), p. 194.

The Act of 1878, Sect. 32, provides that parochial boards are bound to pay over to the school boards the school rate, or any sum required to be levied to meet deficiencies in the school fund, without deduction on account of levying or collecting the same.

Borrowing by school board.

45. Where a school board shall require to incur[1] expense in providing or enlarging a schoolhouse, they, with the consent of the Board of Education, may spread the payment over several years, not exceeding fifty, and may for that purpose borrow money on the security of the school fund and the school rate, and may charge that fund and the school rate with the payment of the principal and interest due in respect of the loan. They may, if they so agree with the lender, pay the amount borrowed, with the interest, by equal annual instalments, not exceeding fifty, and if they do not so agree, they shall annually set aside one fiftieth of the sum borrowed as a sinking fund.

10 & 11 Vict. c. 16.

For the purpose of such borrowing the clauses of "The Commissioners Clauses Act, 1847," with respect to the mortgages to be executed by the commissioners, shall be incorporated with this Act; and in the construction of those clauses for the purpose of this Act, this Act shall be deemed to be the special Act, and the school board which is borrowing shall be deemed to be the commissioners.

The Public Works Loan Commissioners may lend any money required under this section on the security of the school fund and school rate without requiring any further or other security, such loan to be repaid within a period not exceeding fifty years, and to bear interest at the rate of three and a half per centum per annum.

[1] The words "shall require to incur" are noticeable. They were inserted in order that the Public Works Loan Commissioners or any other lenders, might lend money *at the commencement* of any undertaking, to provide or enlarge school accommodation. The first step to be taken by a school board is to get the consent of the Board to borrow. Having

got this consent, they may either go into the open market, or apply to the Public Works Loan Commissioners. The latter may lend without any "recommendation" from the Board, but in all cases the Commissioners would probably communicate with the Board before they lent money.

School boards can pledge the school fund and school rate, and are bound to repay either by instalments or by means of a sinking fund, in fifty years. If they borrow from the Public Works Loan Commissioners, they will get the money at 3½ per cent.

Applications for loans and communications on the subject should be addressed to

The Secretary,
Public Works Loan Board,
3 Bank Buildings, London, E.C.

The clauses of the Commissioners Clauses Act, 1847 (10 and 11 Vict. c. 16), referred to in this Act, will be found in the Appendix, p. 288.

In answer to objections in Committee to the proposal to pledge the school fund in security, the Lord Advocate said: "If the Parliamentary "grant or the school fees were specially appropriated to the teachers, no "creditors would lend money on the security of the fund. . . . He "did not wish to limit the power of borrowing merely to the school rate, "as there might be other funds which could be pledged, and might be "made available by creditors. . . . School boards could borrow only "in respect of the wants of the schools under their administration. . . . "For that purpose they were authorised to pledge the income of their "own schools. . . . The whole of the Parliamentary grant must go "to the maintenance of the school, but it might be necessary to borrow "a larger sum."

Power to Borrow.—School board not entitled to borrow for the improvement and furnishing of existing schools: they may borrow for the purchase of an additional play-ground. Perth Case; opinion of counsel, p. 196.

School-house in this section (45) includes all suitable and customary appurtenances. General case; opinion of counsel, p. 196.

Are School boards entitled to borrow by overdraft? Commercial Bank *v.* Schoolboard of Lady, p. 197.

As to amount borrowed from the Public Works Loan Commissioners since the passing of the Act, cf. Summary, p. 23.

Funds for behoof of public schools to be transferred to school boards.

46. When, in any parish [1] or burgh, property or money has been or shall be vested in the heritors or kirk session, or in any person or persons as trustees for behoof of such parish school, or in the town council or in the magistrates of any burgh, or in any person or persons as trustees for behoof of the burgh school or for the promotion of any branch of education in such schools respectively, or to increase the income of any teacher thereof, the income or revenue of such property or money shall, as it accrues, be accounted for and paid to the school board of such parish or burgh, and shall be applied and administered by the said board, according to the trusts attaching thereto; and the town council of every burgh shall at the term of Martinmas yearly pay to the school board thereof such sum as it has been the custom of such burgh prior to

A.D. 1872 the passing of this Act to contribute to the burgh school out of the common good of the burgh, or from other funds under their charge, and the same shall be applied and administered by the said school board for the purpose of promoting higher instruction;[2] and it shall be lawful for the school board from time to time, with the sanction of the Board of Education, to vary or depart from the said trusts, with a view to increase the efficiency of the parish or burgh school by raising the standard of education therein or otherwise; provided always, that nothing herein contained shall prejudice or interfere with the rights of any teacher or retired teacher of a parish or burgh school under any contract subsisting at the passing of the Act.

[1] As the Bill was framed, the provisions in this section referred to funds vested for the behoof of burgh schools only. In Committee they were expanded so as to include bequests, &c., for the behoof of parish as well as burgh schools.

[2] In answer to a proposal in Committee to omit these words, and so relieve the town councils from the necessity of paying any annual contribution from the "common good," the Lord Advocate said: "The com-
"mon good consisted of property held by the magistrates, as trustees for
"the community, to be administered for certain purposes, and one of
"these purposes was the education of the children of the community.
". . . It had occurred to him that the most proper and reasonable way
"of dealing with this trust money was not to raise any question about
"land registries beyond this—that as contributions had in the past, ac-
"cording to the established custom, been made out of the land registries
"for the support of burgh schools, these contributions should be con-
"tinued. It was not in the nature of a rate; it was the administration
"of trust property held for particular purposes. Many of the burgh
"schools were not to receive support from rates or Parliamentary grants.
". . . Take the burgh school of Glasgow. It had been stated that that
"school had received in time past out of the 'common good' about £400
"a-year. . . . If the words were omitted, the burgh school of Glasgow
"would be impoverished to the extent of £400 a-year paid to them out
"of the 'common good' or trust estate in the hands of the magistrates.
". . . The rates imposed upon the heritors are taxes imposed upon the
"heritors of parishes for the purpose of maintaining rate-schools. . . .
"There was a distinction between rate-support, which consisted of taxes
"for supporting rate-schools, and trust money given for the support of
"schools which were not rate-schools at all." The amendment was with-drawn. The town council, therefore, in burghs, are to pay over every Martinmas to the burgh school boards whatever sums they have been in the habit of contributing to the burgh schools out of the common good; and the school boards are to administer these funds for the purpose of furnishing higher instruction. As to higher class public schools, cf. Sect. 62.

Existing Bequests.—Terms of a trust held by ministers and elders, the income of which did not fall under Sect. 46. Coldstream Case, opinion of counsel, p. 197; cf. also, School Board of Caerlaverock *v.* Hutton's Trustees, p. 173.

Customary contributions for retiring allowances, repairs, &c., fall

under Sect. 46. School Board of Dunbar *v.* Magistrates of Dunbar, p. 198. Cf. also School Board of Salton *v.* Burnet's Trustees, p. 205; School Board of Peebles *v.* Magistrates of Peebles, p. 171; School Board of Perth *v.* Magistrates and Town Council of Perth, p. 198; School Board of Dunfermline *v.* Magistrates, &c., of Dunfermline, p. 201. The most important point decided is that the custom spoken of in the Act does not mean a uniform or prescriptive custom: a ten years' average *tota re perspecta* is sufficient.

In connection with those clauses applicable to bequests, reference is made to the Endowed Institutions (Scotland) Act, 1878, which will be found in the Appendix, p. 325.

School boards may receive and administer bequests.

47. Every school board shall be at liberty to receive any property or funds which may from time to time be conveyed, bequeathed, or gifted to such board for behoof of any school or schools under the management thereof, whether generally or for the promotion of any particular branch or branches of education or instruction, or for increasing the income of any teacher, and it shall be the duty of the board to administer such property, funds, or money according to the wishes and intentions of the donors, and in such manner as to raise the standard of education and otherwise increase the educational efficiency of the school or schools intended to be benefited.

Appointment of treasurer to school board.

48. Each school board shall at the first meeting thereof, or as soon thereafter as conveniently may be, appoint [1] during the pleasure of the school board a fit and proper person or fit and proper persons to be treasurer [2] to the school board, with such remuneration as the school board shall see fit, and it shall be the duty of the treasurer to keep and preserve in a proper book or books an accurate account of the school fund, and of all other property and funds under the administration of the school board, and of the expenditure thereof; and the account of the school fund shall be kept separate from the account of all other property and funds; and the amount of every property or fund held on a separate trust shall be kept separate. And once in each year an account showing the money receipts and payments of the board, and the state of the funds and property under their charge, shall be made up and transmitted, together with the vouchers, by the treasurer to the accountant [3] of the Board of Education, who shall audit and report on the same, and retransmit the same to the treasurer, to be preserved as the school board shall direct, and such account and vouchers shall be patent at all reasonable and convenient times to any member of the school board, or to any ratepayer who demands inspection on the written requisition of not fewer than five ratepayers. And the Board of Education, or any person they may authorise, shall be

A.D. 1872 entitled to inspection of the said account and vouchers, and also of the books of the treasurer at any time; and the said Board of Education may order any account to be printed at the expense of the school board, and such order shall be obeyed without unnecessary delay.

[1] No stamp is required in appointments, 38 Vict. c. 23.

[2] *Treasurer.*—Member of school board may act as treasurer and clerk, but only gratuitously. Paton *v.* School Board of Largs, p. 206.

[3] *Accountant.*—The Accountant of the Board of Edinburgh is not a taxing officer. General Case; opinion of counsel, p. 206.

Transmission of accounts by treasurers to accountant.

49. The first account of every treasurer shall be transmitted to the accountant on or before the first day of January one thousand eight hundred and seventy-four, made up to the term of Whitsunday one thousand eight hundred and seventy-three, and thereafter the account shall be transmitted as herein-before directed annually on the first day of January made up to the term of Whitsunday preceding; and any treasurer failing to do his duty in this respect as herein-before required, may be compelled to do so by order of the Court of Session on the petition and complaint of the accountant.[1]

[1] Only one petition by the accountant against a treasurer has been presented to Court—viz., Bain *v.* Taylor (Treasurer of Abbey Parish, Paisley, School Board), June 27, 1878. There was no procedure.

Accountant.

50. It shall be lawful for the Board of Education to appoint during their pleasure a duly qualified person to be accountant, to perform the duties herein required; and he shall have an office in Edinburgh, and shall be remunerated in such manner as the Board of Education, with the consent of the Lords of Her Majesty's Treasury, shall determine.

Abstract of receipts and expenditure to be laid before Parliament.

51. The accountant shall cause to be annually prepared an abstract showing the total amount of the receipts and expenditure of each school board, and shall transmit the same together with such report as he shall see fit to the Board of Education, who shall transmit the same to the Scotch Education Department in order that the same may be laid before Parliament.

Appointment of officers.

52. A school board may appoint a clerk or clerks[1] and other necessary officers, to hold office during the pleasure of the school board, and may assign them such salaries or remuneration as they think fit, and may from time to time remove any of such officers; but no such appointment shall be made, except at the first meeting of such school board, unless notice in writing has been sent to every member of the board.

Two or more school boards may arrange for the appointment of the same person to be the treasurer or other officer

to both or all such school boards, and such treasurer and other officers shall perform such duties as may be assigned to them by the board or boards who appoint them.[2] A.D. 1872

[1] *Clerks.*—Paton *v.* School Board of Largs, p. 206.

[2] A treasurer *must* be appointed to act for every school board; but the same treasurer may act for several boards. A school board may or may not employ a clerk. In many school boards for parishes a clerk would be an unnecessary expense, as the treasurer could do all the clerical work required.

School fees.

53. The school board shall, subject to the provisions herein-after contained with respect to higher class public schools,[1] fix the school fees to be paid for attendance at each school under their management, and such fees shall be paid to the treasurer of the board, and a separate account shall be kept of the amount of the fees derived from each school, and it shall be lawful for the school board, if they see fit, to pay to the teachers of a school the fees derived from such school, and to divide the same among them as the school board shall determine.

[1] The fees to be paid in the higher class schools are to be fixed by the teachers in the schools with the approval of the school boards, and paid to the treasurer. Sect. 62, sub-sec. 5 and 3.

In all other public schools the fees are to be fixed by the school boards and paid to the treasurer. The school boards may agree to give the fees to the teacher, and in some country parishes it will be found convenient to do so. But the rule will be that the fees go to the school fund, and the teachers will be paid by salary irrespective of the fees.

The following proposals were made in Committee at the solicitation of the teachers, and negatived or withdrawn:—

1. To secure the fees in each school to the teachers.
2. To secure the Parliamentary grant paid in respect of each school to the teachers.
3. To fix by statute a maximum and a minimum salary for the teachers.
4. To enact that certificates should bear a fixed money value, to be paid out of the rates,—*e.g.*, that the holder of a first-class certificate should receive not less than £50 from the rates; and the holder of a third-class certificate not less than £10.
5. To make it compulsory upon school boards to supply teachers' houses whether they were required or not.
6. To omit the words in section 55 providing that appointments to the office of teacher should be during pleasure.

In opposing these several motions, the Government, through the Lord Advocate and the Vice-President of the Council, argued that there should be no interference with the bargains made by the school boards and their teachers. Good teachers would command good prices. It was the interest of the school boards to retain in their service those teachers whose schools earned most money, and if they wished to retain them they must pay them. The fees and grant were not earned by the schoolmaster, but by the school. The school was equipped in the best way at the expense of the community, aided according to results by Parliamentary grant. The schoolmaster was an essential part of the equip-

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ment, and the better he was the better the results would be. It would be wrong to limit the free action either of the school boards or the teachers, or to create a statutory disability which would prevent school boards from employing any teachers they liked, or teachers from accepting employment on such terms as they would be willing to take. The sense of the House of Commons was with the Government on all these points, and none of the amendments were carried.

On the other hand, a proposal was made to prohibit any teacher of a public school from accepting of any office but that of teacher except under certain conditions. The proposal was rejected. A teacher therefore may hold offices unless prevented by the terms of his bargain; provided always that there is nothing in the new Scotch Code against it.

Any statutory duty, not relating to teaching, which before the passing of the Act was laid upon the parish schoolmaster, *must* be performed by him so long as he continues a teacher in a public school in the parish. After he ceases to be teacher such duties will be performed by the registrar. Sect. 76.

A teacher appointed before 1872 may be required by the school board to collect fees. Buchanan *v.* School Board of Tulliallan, p. 206. Livingstone *v.* School Board of New Byth, p. 208.

Contra.—Blair *v.* School Board of Dingwall, p. 209. Macintyre *v.* School Board of Kincardine, p. 209.

Question.—May he be required to keep a register and accounts of fees, and to collect heating charges? Buchanan *v.* School Board of Tulliallan, p. 207.

When fees are not payable in advance, payments should be proportioned to number of attendances. Parish School Board of Selkirk *v.* M'Dougall, p. 209.

Poverty and deficiency of school accommodation not relevant defences to action against parent for fees. School Board of Kirknewton *v.* Arbuckle, p. 210.

Fees may be made payable in advance. Kilbirnie Case; opinion of counsel, p. 210.

Charges for heating may be added to fees. Logierait Case, p. 210.

In Aitken *v.* School Board of Bellie (not yet decided), the important question has been raised, Whether gratuitous education may lawfully be given by a school board, no fees being charged, and the teacher's salary paid entirely out of the rates. There is a free school at Fochabers, in this parish; but the case relates to the additional school at Bogmoor, till lately supported by the Milne Institution and the Duke of Richmond. The school board were advised by counsel that a resolution not to charge fees was illegal under the statute; but that, in the peculiar circumstances of the parish, the Court might allow a certain discretion to the school board.

Teachers' houses.

54. Teachers' houses now existing and possessed under the recited Acts, or any of them, shall be maintained during the continuance in office of the teachers now in possession thereof, and thereafter so long as the school boards shall think proper; and it shall be lawful for school boards to provide teachers' houses and gardens in such places as they judge necessary or convenient; and for this purpose they shall possess and be entitled to exercise all the powers by this Act conferred with respect to school houses or buildings.

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Teachers' Houses.—Where house of an "old teacher" is destroyed school board not bound to rebuild, but to pay a sum of money equivalent. Marshall *v.* School Board of Ardrossan, p. 211.

School board not bound to remove structural defects; they are sole judges of the manner and extent of repairs. Clark *v.* School Board of Strichen, p. 211.

Circumstances in which *held* school board had no right of passage through "old teacher's" garden. School Board of Ardersier *v.* Gray, p. 212.

As to removal of erections in garden, see School Board of Latheron *v.* Mackay, p. 212.

Teachers in office before the passing of Act.

55. Subject to the provisions herein-after contained regarding the removal of the teachers of public schools appointed previously to the passing of this Act, such teachers shall not, with respect to tenure of office, emoluments or retiring allowance as by law, contract, or usage secured to or enjoyed by them at the passing of this Act, be prejudiced by any of the provisions herein contained, and such emoluments and retiring allowances shall be paid and provided by the school board having the management of such schools respectively.

Teachers appointed after the passing of Act.

After the passing of this Act the right and duty to appoint teachers of public schools shall be in the respective school boards having the management of the schools, who shall assign to them such salaries or emoluments as they think fit, and every appointment shall be during the pleasure of the school board.[1]

[1] *Teachers in Office.*—For the interpretation of this section cf.—

Hunter *v.* School Board of Kelso (alterations by school board), p. 213.

Buchanan *v.* School Board of Tulliallan (fees specially appropriated), p. 206.

Blair *v.* School Board of Dingwall (future fees), p. 215.

Alexander *v.* School Board of Lochgilphead (reduction of fees), p. 216.

Fraser *v.* School Board of Carluke (payment of assistant), p. 215.

School Board of Forgue *v.* Liffe (statement of arrears), p. 216.

School Board of Tulliallan *v.* Buchanan and Bryce (appointment of assistant), p. 217. Cf. also Dervaig Case; opinion of counsel, p. 217.

Jamieson *v.* School Board of Gargunnock (right to fees as effected by the appointment of an assistant), p. 217.

Elgin Case; opinion of counsel (effect of appointment of rector), p. 212.

New Teachers—

Muir *v.* School Board of Ardrossan (duration of service), p. 218.

Macfarlane *v.* School Board of Mochrum (appointment by the year), p. 218.

Morrison *v.* School Board of Abernethy (three months' notice), p. 218.

Stirling Case; opinion of counsel (female teachers' notice), p. 220.

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Wilson *v.* School Board of Straiton (proportion of Parliamentary grant), p. 220.

M'Gregor *v.* Caldwell (Franchise—yearly tenancy), p. 220.

Kilgour, Munro and Hodge } (Franchise — appointment "during pleasure"), p. 221-223.

Teachers. Parliamentary franchise. Special provision is made by Sect. 24 of the Act of 1878 with the object of conferring the Parliamentary franchise upon teachers in respect of the lands and heritages which they occupy under school boards, and notwithstanding that the said lands and heritages are held as part of the emoluments of office, and at the pleasure of the boards. Cf. p. 132.

Murray *v.* Morton, where the 24th Sect. of the Act of 1878 was held to restore teachers to the position of liferent proprietors as regards the franchise, p. 223. This decision will probably render further legislation necessary, as it introduces a violent anomaly in registration law.

Qualified teachers.

56. No person shall be appointed to the office of principal teacher in a public school who is not the holder of a certificate of competency. But any person who at the time of the passing of this Act is the principal teacher of a school under the recited Acts or any of them, or of a burgh school, or the holder of a certificate from, or registered as a certificated teacher by, the Lords of the Committee of Council on Education, or who is a teacher in a burgh school and a member of the council of a Scotch university, shall be deemed to be a holder of a certificate of competency.[1]

[1] Under this section the following existing teachers shall be *deemed* to be holders of certificates of competency :—

1. Principal teacher of a parish, side, Parliamentary, or heritors' girls' school.
2. Principal teacher of a burgh school, or subordinate teacher of a burgh school, if he is a member of council of a Scotch university.
3. A holder of a certificate } under the regulations of the Com-
4. A registered certificate teacher } mittee of Council in Education.

The object of this section is to provide that certificated teachers only shall be appointed as principal teachers in public schools. But in order that principal teachers of parish or burgh schools in office at the passing of the Act who are uncertificated may not be rendered ineligible, it is provided that they are to hold a sort of honorary rank as certificated teachers. They are to be considered as holders of what may be called "Parliamentary certificates." Any one who henceforth holds such certificate is eligible as a principal teacher of *a public school*. If he should leave his public and be appointed to a non-public school, he could not claim the privileges of a certificated teacher, *e.g.*, he could not take pupil teachers, nor could he bring Parliamentary grant to his school. The Scotch code may provide that the holder of a "Parliamentary certificate" shall be entitled to these privileges either with or without passing an examination. But the statute gives no status as a "certificated teacher."

Examinations of teachers.

57. It shall be the duty of the Scotch Education Department immediately after the passing of this Act, and thereafter from time to time, to make such regulations as they may see

fit in regard to the time and manner and the subjects and the standards of the examinations to be passed by such persons as desire to obtain a certificate of competency, and to regulate the conditions on which candidates may be admitted to examination, and the notice to be given thereof; and such examinations shall be conducted by examiners appointed by the Department from time to time, and shall be held at such times and places as shall be fixed by the Department.[1] A.D. 1872

[1] The Department fix the standard, &c., of the examination for teachers in all public schools, except the higher class public schools—that is to say, for all teachers whose schools are to receive Parliamentary grant. That is all the Department have to do with. Every teacher of a public school must hold a certificate of competency, or be deemed to hold such certificate, under Sect. 56, as a minimum qualification. The school board may demand any other qualification they like, and appoint examiners to see that the teachers have these other qualifications. Practically the certificate of competency will be generally accepted as sufficient qualification.

It will be observed that the regulations as to the examinations for certificates of competency are to be made immediately after the passing of the Act, and that the duties connected with these examinations are to be discharged entirely by the Department. The Board have nothing to do with them.

Certificates.

58. Every candidate for a certificate of competency shall be examined according to the regulations issued by the Scotch Education department, and the examiners shall satisfy themselves of his skill in the theory and practice of teaching, and make such report as to the result of the examination as may be required by the said Department, who may grant a certificate accordingly; and any certificate which may be granted by the said Department shall specify the class or degree of competency, and the subjects to which it applies, and shall be conclusive evidence that the holder thereof has passed the required examination, and has been found qualified for the said office in the class or degree or the subjects therein specified.

University degrees may come in place of examination.

59. When a degree in arts or science of any university in the United Kingdom conferred after an examination in all or any of the subjects specified by the Department as subjects for the examination of candidates for a certificate of competency is held by any such candidate, the examiners may lawfully dispense with his examination in such of the said subjects as he has already been examined in on obtaining the degree.

Removal of teachers.

60. Any teacher of a public school appointed previously to the passing of this Act, may be removed from his office in manner following; that is to say,

(1.) It shall be lawful to the school board of any parish or burgh to make a complaint to the sheriff of the

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county, charging any such teacher with immoral conduct or cruel or improper treatment of the scholars under his charge, and specifying in such complaint the particular acts in respect of which the complaint is made; and a copy of such complaint shall be served upon the teacher, who shall be required on an induciæ of eight days to appear before the sheriff to answer to the said complaint; and the teacher shall, if he deny the charge, and if he think fit, answer the particulars of the complaint in writing, or may plead generally that he is Not Guilty; and the sheriff shall thereafter proceed to the trial of the complaint, and take the evidence, in the manner observed in the Sheriff Court in taking proofs in civil causes; and if he shall find such complaint or any material and relevant part thereof to be proved, he shall give judgment accordingly, and pronounce sentence of deprivation, which sentence shall be final, and not subject to review:[1]

[1] *Subject to review.*—Sentence of sheriff is not subject to review except on ground of fundamental nullity. Macintyre *v.* School Board of Kincardine, p. 224.

(2.) If the school board of any parish or burgh shall consider that any such teacher is incompetent, unfit, or inefficient, they may require a special report regarding the school and the teacher from Her Majesty's inspector charged with the duty of inspecting such school; and on receiving such report the school board may if they see cause remove such teacher from office; provided that before proceeding to give judgment on the matter they shall furnish to the teacher a copy of such report, and that a judgment removing the teacher shall not have effect until confirmed by the Board of Education: Provided also, that in the case of teachers of parish schools appointed previously to the passing of this Act who may be so removed, the school boards shall have the same powers of granting retiring allowances, and the teachers shall have the same rights to retiring allowances, as were vested in heritors and ministers and in parish schoolmasters respectively by sections nineteen and twenty of the Parochial and Burgh Schoolmasters (Scotland) Act, 1861, in the case of parish schoolmasters permitted or required to resign or dismissed or removed from office as therein provided.[2]

[1] The provisions regarding retiring allowances contained in Sects. 19 and 20 of the Parochial and Burgh Schoolmasters (Scotland) Act, 1861, are as follows:— A.D. 1872

"Provided that where such resignation [resignation on report of one "of H.M. Inspectors] shall not be occasioned by any fault on part of "the schoolmaster—*i.e.*, if he be disqualified because of infirmity or "old age—the heritors shall grant a retiring allowance the amount "whereof shall not be less than two third parts of the amount of the "salary pertaining to said office at the date of such resignation thereof, "and shall not exceed the gross amount of such salary, which retiring "allowance shall be payable in all respects in like manner with the "salary of the schoolmaster."

"In all cases in which the minister and heritors are by this Act em- "powered to provide a retiring allowance for a schoolmaster who shall "resign or shall be removed from his office, it shall be lawful for them, "if they see fit, to provide for such schoolmaster, in addition to such "allowance, and in like manner, a further yearly sum, equal in amount "to the annual value of any dwelling house and garden to which he may "be entitled as such schoolmaster, as the same shall be valued by the "assessor for the county."

Removal of teachers.—For the interpretation of this section, cf. the following cases:—

Whyte *v.* School Board of Haddington } (unfit and inefficient) p. 224.
Robb *v.* School Board of Logiealmond }

Robb *v.* School Board of Logiealmond (claim for retiring allowance), p. 225.

Morison *v.* School Board of Glenshiel (question of "fault"), p. 227.

Macfarlane *v.* School Board of Mochrum (Report of Inspector), p. 237.

Marshall *v.* School Board of Ardrossan (Oppression—Report), p. 238.

St Fergus Case, opinion of counsel (contumacy no ground for removal), p. 239.

School Board of Aberdalgie *v.* Doig (resolution of dismissal), p. 240.

Retiring allowance.

61. A school board may permit any teacher of a public school to resign his office upon the condition of receiving a retiring allowance, and the said board may award and pay to such teacher out of the school fund such retiring allowance as they shall think fit: Provided always, that nothing herein contained shall affect the right under the existing law to a retiring allowance of any teacher appointed under the recited Acts, or any of them.[1]

[1] The rights, namely, contained in the sections quoted above of the Parochial and Burgh Schoolmasters (Scotland) Act, 1861 (24 & 25 Vict. c. 107, Sects. 19, 20).

Retiring allowance.—This power is not limited by Sect. 64. Glasgow case, opinion of counsel, p. 239.

Higher class public schools.—Burgh.

62. With respect to burgh schools existing at the passing of this Act, in which the education given does not consist chiefly of elementary instruction in reading, writing, and arithmetic, but of instruction in Latin, Greek, modern languages, mathematics, natural science, and generally in the higher branches of knowledge, the following provisions shall have effect:

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(1.) Such schools shall be deemed to be higher class public schools, and shall be managed by the school boards accordingly, with a view to promote the higher education of the country :[1]

[1] The higher class schools, it will be observed, are to be managed *with a view to promote the higher education of the country.* The control of these schools is placed entirely in the hands of the school boards.

It is left to the discretion of school boards to fix the standard of qualification for higher class school teachers. If they determine to examine their teachers, the field from which they are to appoint examiners is limited to professors in Scotch universities or distinguished teachers. This limitation seems to imply that the Legislature did not contemplate any system of examinations for the teachers of these schools.

(2.) A school board having the management of any such school may from time to time fix the standard of qualification of all or any of the teachers to be appointed thereto, and determine the subjects of the examination to be passed by them respectively, and from time to time appoint examiners (who shall be professors of some Scotch university or teachers of distinction in a higher class public school) to conduct the same, and the foregoing enactments regarding certificates of competency shall not apply to teachers of higher class public schools whose qualifications have been fixed and ascertained under this provision; but any person who at the time of the passing of this Act, being a master in a higher class school, is a member of council of any of the universities of Scotland, shall be deemed to be the holder of a certificate of competency for the office of teacher in any of the said higher class schools:

(3.) The funds and revenues of such schools shall consist of,—1. Contributions payable from the common good of the burghs in which they respectively exist. 2. All endowments applicable to the general purposes of the respective schools. 3. Endowments for the promotion of instruction in particular subjects, or for the benefit of teachers of particular branches in the respective schools; and, 4. Fees paid by scholars. And the whole funds and revenues of any such school shall be administered exclusively for the purposes thereof, and the fees of each school shall be paid to the treasurer of the board, who shall keep a separate account thereof, and the full amount of the fees shall be divided and distributed among the teachers as the board shall determine;

and the Board of Education shall be entitled from time to time to require from the school board a statement of the funds and revenues of each school and of the application of the same: A.D. 1872

[2] Retiring allowances may be paid out of the school fund to teachers of higher class schools.—Glasgow Case; opinion of counsel, p. 241.

Expense of alterations and repairs cannot be charged on the school fund.—Edinburgh Case; opinion of counsel, p. 242. Cf. note as to expense of school buildings, p. 95.

(4.) A school board having the management of any such school shall, so far as practicable and expedient, subject to the approval of the Board of Education, relieve the same of the necessity of giving elementary instruction in reading, writing, and arithmetic to young children, by otherwise providing sufficient public school accommodation for such elementary instruction, so that the funds and revenues of such higher class school, and the time of the teachers, may be more exclusively applied to giving instruction in the higher branches:[3]

[3] The meaning of this provision is, that elementary instruction should be confined to elementary schools, and that the whole power of the higher class schools should be devoted to giving instruction in the more advanced branches of knowledge. This can only be carried out in towns or other considerable centres of population. In country districts it is probable that the higher branches will continue to be taught as heretofore in the parish schools. But if these provisions be enforced in the larger towns in accordance with the spirit of the measure, a radical change will take place in the system of instruction in those burgh schools which are henceforth to be regarded as higher class public schools. The effects of the change will be felt in the universities. Students will go to the universities better grounded in the elements of the higher subjects than heretofore, and professors will be relieved of the burden of elementary drill in their junior classes.

A school board may convert into a preparatory department part of a higher class school.—Aberdeen Case; opinion of counsel, p. 242.

(5.) The fees to be paid for attendance at any such school shall be fixed from time to time, but at intervals of not less than three years, by the principal teacher and the ordinary teachers thereof, with the approval of the school board, subject to the determination of the Board of Education in the event of difference of opinion:

(6.) Every such school shall, with reference to the higher branches of knowledge taught therein, be annually examined by examiners appointed and employed for that purpose by the school board, and in fixing the periods of examination regard shall be had to the

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reasonable wishes of the head master and other teachers, and the expenses incident to the said examinations may be paid out of the school fund,[4] and the houses of such schools shall be deemed school-houses within the meaning of the clause of this Act regarding the borrowing of money on the security of the school fund and school rate.

[4] The terms of this enactment are general. Every year, at a time which the teachers consider suitable, every higher class school must be examined, and the expenses paid out of the school fund. But the school boards may have these examinations conducted in any way they think proper—*e.g.*, the school boards of two or three or all of the burghs in which these schools exist, might institute competitive examinations between their several schools, and appoint the same examiners to conduct the examinations. The intention of the statute seems to be that there should, each year, be an efficient examination of these schools, for the encouragement of the higher branches of knowledge, and that the way of carrying out this intention should be left to the wisdom of the school boards.

The schools specified in Schedule C. hereto annexed shall be deemed to be higher class public schools to which the foregoing provisions apply; and it shall be lawful for the school board of any burgh by resolution at a meeting specially called for the purpose on fourteen days notice in writing to each member thereof, to resolve, subject to the approval of the Board of Education, that any school under its management shall be deemed to be a higher class public school, to be managed according to the foregoing provisions.

The following schools have been erected into higher class public schools since the passing of the Act:—

Name of Burgh.	Name of School.
Arbroath, . . .	High School.
Hamilton, . . .	Academy.
Irvine, . . .	Academy.
Leith, . . .	High School.
Peebles, . . .	Bonnington Park School.
Dunfermline . . .	Grammar School.

Higher class public schools.—Parish.

63. When from the existence of any endowment or foundation in whatever form, or in whatever terms, or from any other cause, a parish school existing at the passing of this Act is in the condition of being a school in which instruction in the higher branches of knowledge is given to such extent, and to such a number of scholars, that it is not reasonably to be considered as chiefly an elementary school, it shall be lawful for the school board having the management thereof by resolution passed and approved of in manner provided in the preceding clause with reference to burgh schools, to resolve

that it shall be deemed to be a higher class public school, to be managed according to the provisions of the foregoing section, and thereafter such school shall be subject to the said provisions, so far as applicable to the circumstances thereof. A.D. 1872

Funds.

64. No part of the funds or revenues of a higher class public school within the meaning of the preceding clauses shall pass into the school fund, and no part of the expenses of any such school, except as herein otherwise specially provided, shall be paid out of that fund.[1]

Retiring Allowances.—Glasgow Case ; opinion of counsel, p. 241.
Alterations and Repairs.—Edinburgh Case ; opinion of counsel, 242.

Higher class public schools—
The Act of 1878 has modified the provisions of this and the two preceding sections in the following respects :—
1. *Expenses of School Buildings.*—School boards which have the management of higher class public schools are bound to maintain the buildings out of the school fund in the same manner in which they are bound to maintain the buildings of any other school under their management.
2. *Expenses for the Promotion of Higher Education*—School boards are empowered to pay out of the school fund such other expenses for the promotion of higher education as are not provided for by the revenues mentioned in this section.

But no expenditure can be incurred without the consent of the department. Cf. Act of 1878, Sect. 18. Cf. Circular of Department, p. 453.
With regard to the higher class public schools, cf. Summary, p. 37-39.

In connection with the provisions regarding these schools contained in this Act and the Act of 1878 reference is made to the Endowed Institutions (Scotland) Act, 1878, which will be found in the Appendix.

Evidence of orders, &c., of Department.

65. All orders, minutes, certificates, notices, requisitions, and documents of the Scotch Education Department, if purporting to be signed by a secretary or assistant secretary of the said Department, or by any officer of the Department in Scotland, performing the duties of a secretary or assistant secretary, shall, unless the contrary is proved, be deemed to have been so signed and to have been made by the Scotch Education Department.

Inspection.

66. Every public school, and every school which is subject to inspection, shall be open at all times to the inspection of any of Her Majesty's inspectors, but it shall be no part of the duties of such inspector to inquire into any instruction in religious subjects, or to examine any scholar in religious knowledge or in any religious subject or book.[1]

[1] A list of H.M. Inspectors, with the districts assigned to them, will be found in the Appendix, p. 289.

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Parliamentary grant.

67. Parliamentary grants according to the rates [1] and under the conditions contained in the minutes of the Scotch Education Department in force for the time may be made—

(1.) To any school board for and in respect of the public schools under their management:

(2.) To the managers of any school which is, in the opinion of the Scotch Education Department, efficiently contributing to the secular education of the parish or burgh in which it is situated; provided that such conditions shall not give any preference or advantage to any school on the ground that it is or is not provided by a school board.

Provided, that due care shall be taken by the Scotch Education Department, in the construction of such minutes, that the standard of education which now exists in the public schools shall not be lowered, and that, as far as possible, as high a standard shall be maintained in all schools inspected by the said Department, and provided that no such minute shall be in force until it has lain for not less than one month on the table of both Houses of Parliament.

Provided also, that parliamentary grants shall not be made for or in respect of—

(*a.*) Instruction in religious subjects:

(*b.*) A school established after the passing of this Act, not being a public school, unless the said Department shall after due inquiry be satisfied that no sufficient provision exists for the children for whom the school is intended, regard being had to the religious belief of their parents, or that it is otherwise specially required in the locality where it is situated.

In reference to this provision it is noteworthy that the Episcopal schools which receive Parliamentary grants have increased since the passing of the Act from 46 to 72, and the Roman Catholic schools have increased from 22 to 112.—*Report of Committee of Council on Education in Scotland*, 1877-1878.

Where in any parish or burgh a school rate of not less than threepence [2] in the pound on the rateable value of such parish or burgh shall be levied, and the whole produce of such rate is less than twenty pounds or than seven shillings and sixpence per child of the number of children in average attendance at the public schools provided by the school boards in such parish or burgh, such school board shall be entitled in addition to the parliamentary grant in aid of the public schools provided by them to such further sum out of

moneys provided by Parliament as will, together with the produce of the rate, make up the sum of twenty pounds, or seven shillings and sixpence for each such child. A.D. 1872

No parliamentary grant shall be made in aid of building, enlarging, improving, or fitting up any school, except in pursuance of a written application from a school board containing the information required by the Scotch Education Department for enabling them to decide thereon, and sent to the said Department on or before the thirty-first day of December one thousand eight hundred and seventy-three, but without prejudice to applications made prior to the passing of this Act being dealt with according to the existing laws; and with respect to any parish situated in the counties of Inverness, Argyll, Ross, and Orkney and Shetland, where a school rate of not less than ninepence in the pound on the rateable value of such parish has been levied, such grant as aforesaid may be made of an amount not exceeding three hundred pounds for each school and one hundred pounds for each teacher's residence, without regard to the amount contributed by the school board out of the school fund or otherwise, or by local subscription, towards the building, enlarging, improving, or fitting up such school or residence; and in any parish so situated where a school rate of not less than threepence in the pound on the rateable value of the parish has been levied, the annual parliamentary grant to a school shall not be reduced by its excess above the income of the school derived from fees, rates, and subscriptions.

The provisions with regard to parliamentary grants have been modified by the following enactments in the Elementary Education Act, 1876 (39 & 40 Vict. cap. 79):—

19. So much of Section 97 of "The Elementary Education Act, "1870," as enacts that the conditions required to be fulfilled by an elementary school in order to obtain the annual parliamentary grant shall provide that the grant shall not for any year exceed the income of the school for that year, which was derived from voluntary contributions and from school fees, and from any sources other than the parliamentary grant, shall be repealed as from the 31st day of March 1877.

After the 31st day of March 1877, the conditions required to be fulfilled by an elementary school in order to obtain the annual parliamentary grant shall provide that,—

(1.) Such grant shall not in any year be reduced by reason of its excess above the income of the school if the grant do not exceed the amount of 17s. 6d. *per* child in *average attendance* at the school during that year, but shall not exceed that amount *per* child, except by the same sum by which the income of the school, derived from voluntary contributions, rates, school fees,

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endowments, and any source whatever other than the parliamentary grant exceeds the said amount per child; and

(2.) Where the population of the *school district* in which the school is situated, or the population within two miles, measured, according to the nearest road from the school, is less than 300, and there is no other public elementary school recognised by the Education Department as available for the children of that district, or that population (as the case may be), a special parliamentary grant may be made annually to that school to the amount, if the said population exceeds 200, of £10, and if it does not exceed 200, of £15; and

(3.) The said special grant shall be in addition to the ordinary annual parliamentary grant, and shall not be included in the calculation of that grant for the purpose of determining whether it does or does not exceed the amount before in this section mentioned.

Conditions for obtaining Parliamentary Grant.

20. The conditions required to be fulfilled by schools in order to obtain annual parliamentary grants shall provide that the income of the schools shall be applied only for the purpose of public elementary schools.

. . . . . .

APPLICATION OF THE ACT TO SCOTLAND.

53. In the application of this Act to Scotland, the following provision shall have effect:—

The provisions of this Act with respect to the conditions to be fulfilled by schools in order to obtain an annual parliamentary grant, shall apply to Scotland.

Conscience clause.

68. Every public school, and every school subject to inspection and in receipt of any public money as herein-before provided,[1] shall be open to children of all denominations, and any child may be withdrawn by his parents from any instruction in religious subjects and from any religious observance in any such school; and no child shall in any such school be placed at any disadvantage with respect to the secular instruction given therein by reason of the denomination to which such child or his parents belong, or by reason of his being withdrawn from any instruction in religious subjects. The time or times during which any religious observance is practised or instruction in religious subjects is given at any meeting of the school for elementary instruction shall be either at the beginning or at the end, or at the beginning and at the end of such meeting, and shall be specified in a table approved of by the Scotch Education Department.[2]

[1] These words limit the application of this clause to the schools in receipt of public money under this Act. If these words had not been inserted, Normal Schools—which are still denominational—would have

been subject to the time-table conscience clause. These schools are subject to inspection, and are in receipt of public money, but not as "herein-before provided." They are not, therefore, affected by this Act. A.D. 1872

[2] This clause, as the Bill passed the House of Commons, contained a provision in accordance with which secular instruction was to be given four hours each day continuously, and religious instruction was confined to the times before or after the four hours of secular instruction. The House of Lords altered this, and inserted the provision in the Act taken from the Elementary Education Act of 1870.

In England the regulations regarding the time-table are strictly enforced. The time-table must be approved by the inspector on behalf of the Department. It must set apart for secular instruction at least two consecutive hours at each morning and afternoon meeting, and one hour and a half at each evening meeting of the school. No instruction in religious subjects may be given in any lesson during the hours fixed for secular instruction. No change in the time-table, so far as the time for religious instruction goes, can be made without the express sanction of the inspector. He ought to refuse to sanction any change during the school session, so that parents may know when to withdraw their children. If the school premises admit of it, the children withdrawn from religious instruction should receive by themselves instruction in secular subjects during the time they are withdrawn. The inspector, on any visit which he pays a school without notice, will report to the Department that the work of the school is not carried on in accordance with the time-table. Any neglect of the rules issued in regard to the time-table entails a forfeiture of grant. Cf. minute of the Scotch Education Department as to approval of time-tables. Appendix, pp. 435 and 441.

At the end of clause 68 it was proposed to add words to exclude the use of all catechisms and formularies in schools. But the proposal was rejected by a large majority. The Lord Advocate observed that "the "principle of the measure was that, subject to the provisions of a con- "science clause, the matter of religious teaching was one which should "be left to the people themselves, and that the statute should neither "prescribe nor proscribe anything upon the subject." Mr Forster said,—"To exclude the Catechism from the Scotch schools would be an "extraordinary and tyrannical change, and one entirely contrary to the "feeling of the Scotch people." An attempt was also made to insert words which would make it compulsory to teach the Bible in all public schools; but on a division the amendment was lost by a large majority.

School boards, therefore, may make any provision they think proper on the subject of religious instruction, provided that they conform to the conscience clause.

Parents to provide elementary education for their children, and when unable to pay fees to apply to parochial board.

69. It shall be the duty of every parent to provide elementary education in reading, writing, and arithmetic for his children, between five and thirteen years of age, and if unable from poverty to pay therefor, to apply to the parochial board of the parish or burgh in which he resides, and it shall be the duty of the said board to pay out of the poor fund the ordinary and reasonable fees for the elementary education of every such child, or such part of such fees as the parent shall be unable to pay, in the event of such board being satisfied of the inability of the parent to pay such fees,

A.D. 1872 and the provisions of this clause shall apply to the education of blind children, but no such payment shall be made or refused on condition of the child attending any school in receipt of the parliamentary grant other than such as may be selected by the parent.[1]

[1] Parochial Board. As the Bill was framed, power was given to the school board to pay fees for poor children. The parochial board, however, was substituted, on the ground that it was inexpedient to erect a double machinery in towns for ascertaining the condition of persons belonging to the poorer classes. On two opposite proposals—(1) that the selection of the school to which his children should be sent should be left to the parent; (2) that the parochial board should pay fees only to public schools, the Lord Advocate said—"From both these extremes "he differed. He thought the feelings of the parents ought to be "attended to and respected; but to say that pauper parents should be "entitled to dictate to the authorities what schools the children should "be sent to, without any reference to convenience or locality, was "absurd."

Compulsory attendance — Poverty.—The parochial board are the sole judges whether a parent is unable by poverty to pay fees. Callachan *v.* Paterson, p. 243.

The Act of 1878 gives an appeal to the sheriff from a refusal of the parochial board to pay fees. The appeal must be taken at the instance of the school board, Sect. 22.

The following extract from the thirty-third Report of the Board of Supervision gives some interesting facts bearing upon the operation of this section:—

We have again called for returns of the number of pauper children, and of applicants under Sect. 69 of the Education Act, receiving education at the cost of the parochial boards, and the expenditure upon these two classes respectively, and we print in the Appendix a summary of these returns. It appears that during the year ended 14th May 1878, 23,854 pauper children were receiving education, at a cost for the year to the parochial boards of £14,369, 0s. 4d.; and that 6177 children, for whom application had been made under Sect. 69 of the Education Act, were also receiving education during the year at a cost to the parochial boards of £3883, 19s. 10½d. It thus appears that the expenditure from the poor's funds on account of education, exclusive of the cost of education in Industrial Schools, Deaf and Dumb Institutions, and other similar places, is £18,253, 0s. 2½d. It further appears that 4817 applications were made to parochial boards under the 69th section of the Education Act during the year, and that of these 3216 were granted, and 1287 refused. The remainder (314) had not been disposed of at the date of the return, or had been withdrawn.

The following Table exhibits the number of Children, pauper and non-pauper respectively, educated at the cost of parochial boards, and the expenditure thereon, since the passing of the Education (Scotland) Act:—

Year.	Poor Law.		Education Act (Sect. 69.	
	Number of Pauper Children who received Education.	Cost of their Education.	Number of Non-Pauper Children who received Education at the Cost of the Parish	Cost of their Education.
1874	22,766	£11,661 16 11¼	2,377	£560 7 2½
1875	23,988	13,291 4 6¾	4,368	1,773 16 6¾
1876	24,274	14,284 1 2¾	5,163	2,617 4 11½
1877	24,271	14,511 6 5	6,134	3,409 10 2
1878	23,854	14,369 0 4	6,177	3,883 19 10½

Defaulting parents may be proceeded against by the procurator fiscal on a certificate from the board.

70. It shall be the duty of every school board to appoint an officer to ascertain and report to the school board what parents, resident within the parish or burgh, have failed and omitted, and are failing and omitting, to perform the duty of providing for their children such elementary education as aforesaid, and it shall be the duty of such officer to keep the school board constantly informed of the names and designations of all such parents; and the clerk of the school board, or some other appointed by the school board for that duty, shall keep, and from time to time revise, add to, and correct a list of all such parents and their children who have not received and are not in course of receiving such elementary education as aforesaid; and the school board is hereby authorised to summon any such parent to appear before the school board at any meeting thereof, and to require from him every information and explanation respecting his failure of duty with respect to the education of his child or children; and if he shall either fail to appear or on his appearance to satisfy the school board that he has not failed in such duty without reasonable excuse for such failure, and shall not undertake to the satisfaction of the school board to perform such duty by forthwith providing such elementary education as aforesaid for his children, it shall be lawful to and shall be the duty of the school board to certify in writing that he has been and is grossly and without reasonable excuse failing to discharge the duty of providing elementary education for his child or children, and on such certificate being transmitted to the procurator fiscal of the county or district of the county in which the parent resides, or other person appointed by the school board, he shall prosecute such parent before the sheriff of the county for such failure of duty as is in the certificate specified, and on conviction the parent shall be liable to a penalty not exceeding twenty shillings, or to imprisonment not exceeding fourteen days;[1] and such procedure as afore-

A.D. 1872 said may be repeated against the same parent, and in respect of a continuance of the same failure of duty, at intervals of not less than three months. All fines recovered under this clause shall be paid into the school fund.

[1] The penalty in the English Act is limited to 5s., with costs. Under 39 & 40 Vict. c. 79, Sect. 12, two weeks must elapse before repeating a prosecution for non-compliance with an attendance order.

Compulsory Attendance. — These sections have been interpreted by the following cases :—

Cargill Case, Mochrum Case } (examination of child in court), p. 247.
Jameson *v.* Cameron (remit to teacher), p. 247.
Kirkcudbright Case (examination by sheriff), p. 247.
Edzell Case (home teaching), p. 247.
Cuthill Case (responsibility of teacher), p. 248.
Bowden Case (question of monitors), p. 248.
Campbell *v.* Jameson, North Yell Case } (distance from school), p. 245.
Selkirk Case (half-timers), p. 248.
Procurator Fiscal *v.* Reid (Coal Mines Regulation Act), p. 249.
Campbell *v.* Jameson (want of school accommodation), p. 245.
France *v.* Procurator Fiscal of Inverness { (necessity of written certificate), (evidence of parent), } p. 245.
Forglen Case (choice of school), p. 249.
Macpherson *v.* Fowler (inability to pay fees), p. 244. [But see the Act of 1878, Sect. 22.]

Method of procedure.

71. Every prosecution under the preceding section shall be in the form prescribed by the "Summary Procedure (Scotland)[1] " Act, 1864," and the judgment of the sheriff therein shall be final, and shall not be subject to the review of or the proceedings to be removed to any superior court upon the merits, or on informality or want of jurisdiction, or any other ground; and expenses not exceeding twenty shillings may be awarded by the sheriff against the parent complained of, but it shall not be lawful to award expenses against the procurator fiscal;[2] and the reasonable expenses of the prosecution, as the same may be certified by the sheriff, shall, in so far as not awarded against and recovered from the parent, be paid by the school board on whose certificate it proceeded out of the school fund.

[1] *Compulsory Attendance—Procedure.*—Whether gross neglect has been committed may be stated as a question of law under the Summary Procedure Act, 1875. Campbell *v.* Jameson, p. 245.

[2] *Procurator Fiscal Expenses.*—Both practice and opinion are divided on the question whether procurators fiscal are entitled to charge fees for prosecutions. Port Glasgow, West Kilbride, Kilmarnock Cases; opinion of counsel, p. 250.

72. Any person who receives into his house as a domestic

servant, or who employs as a farm servant, or as a worker in a mine, factory, or workshop, or assistant in a shop, a child under the age of thirteen who has not attended school regularly for at least three years between the ages of five and thirteen and is unable to read and write, and who continues such child in his employment after notice from the school board of the parish or burgh, or an officer thereof, that he has not received elementary education, shall be deemed thereby to undertake the duty of a parent with respect to the elementary education of such child, so long as he remains in his employment, and shall be liable to be proceeded against, and to be fined or imprisoned as herein-before provided in the case of a parent, should he grossly and without reasonable excuse fail to perform such duty; but the duty of the parent shall not thereby be discharged or diminished, nor shall the parent be thereby exempted from liability to be proceeded against as aforesaid.[1]

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Employers of children shall be deemed to undertake the duty of a parent,

but parent not thereby exempted from liability.

[1] It will be observed that this provision does not prohibit a person from employing a child who had not been three years at a school, and who could not read or write. It makes the employer subject to all the liabilities to which a parent is subject. The penalty is not imposed on the master for employing such children. It is imposed for continuing to do so after notice from the school board. This section seems to be practically superseded by the Act of 1878, Sect. 5, which does not provide for notice to the employer, and requires a certificate as the condition of employment wherever the Acts regulating Factories, Workshops, and Mines do not apply.

73. A certificate of ability to read and write, and of a knowledge of elementary arithmetic, granted in favour of any child by one of Her Majesty's inspectors, shall exempt the parent and all employers of such child from any prosecution or other proceeding under this Act for neglecting to provide for the education of such child.

Exemptions.

Important alterations in the law have been introduced by the Act of 1878 as to—

1. The employment of children.
2. The enforcement of regulations as to school attendance and employment of children.
3. The procedure by which, and the tribunal before which, prosecutions are to be conducted.
4. The expenses of prosecutions.
5. The penalties for contravention of the law.

These alterations are summarised in Part III., and will be found *in extenso* at pp. 117-120.

Reference is also made to the provisions of the Factories and Workshops Act of 1878, which will be found in the Appendix, p. 329, and to the minute of Department fixing standards for certificates, p. 457.

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Report by school board.

74. Every school board shall make such report and returns,[1] and give such information to the Board of Education as the board may from time to time require.

[1] If a school board fail to make any return required, the Board may appoint a person to make it at the expense of the school board. Cf. Sect. 33.

Annual report.

75. The Scotch Education Department shall in every year cause to be laid before both Houses of Parliament a report of their proceedings under this Act during the preceding year; and such report shall contain a special report upon each school erected or established after the passing of this Act, not being a public school, which in the opinion of the said Department is entitled to receive parliamentary grant.

The registrar to perform certain duties imposed upon the schoolmaster of a parish.

76. The duties imposed upon the schoolmaster of a parish by the Act of the forty-second year of the reign of King George the Third, chapter ninety-one, and by the Act of the seventh year of the reign of King William the Fourth and the first year of the reign of Her present Majesty, chapter eighty-three, and by the Act of the eighth and ninth years of the reign of Her present Majesty, chapter thirty-three, and any other duties not relating to teaching which according to any law or statute in force at the date of the passing of this Act are imposed upon the schoolmaster of a parish, shall be performed by the schoolmaster of the parish in office at the date of the passing of this Act, so long as he continues to be teacher of a public school in the parish; and upon his ceasing to be teacher of a public school in the parish the said duties shall be performed by the registrar appointed for such parish, or for the registration district in which the whole or the greater part thereof is comprised under the provisions of the Act of the seventeenth and eighteenth years of the reign of Her present Majesty, chapter eighty; and the said registrar shall do and perform all acts and things required by any such law or statute to be done and performed by such schoolmaster in the manner and subject to the conditions, and with the rights specified by such law or statute, as if he were the officer appointed by such law or statute to do and perform the same.[1]

[1] Cf. Summary, p. 44, notes.

This Act not to affect Schoolmasters

77. Every person who at the time of the passing of this Act is a contributor to the fund regulated by the Act ninth and tenth Victoria, chapter two hundred and twenty-six, intituled "An Act for better raising and more securely constitut-

" ing the fund for the relief of widows and children of burgh " and parochial schoolmasters in Scotland," shall, whether he continue in the school of which he is now teacher or be appointed teacher of any parish or burgh school by or under this Act, remain liable to all the obligations and be entitled to all the benefits to which he would have been liable and entitled if this Act had not been passed, and if the constitution of parish and burgh schools had not been altered by this Act: Provided always, that nothing in the said Act or this Act contained shall oblige any person who shall be hereafter appointed a teacher of any parish or burgh school to contribute to the said fund unless he be a contributor at the time of the passing of this Act. A.D. 1872 — Widows Fund Act, 9 & 10 Vict. c. 226.

78. The recited Acts[1] of the first Parliament of King William, in the year one thousand six hundred and ninety-six, of the forty-third year of the reign of His Majesty King George the Third, chapter fifty-four, and of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter one hundred and seven, shall be and are hereby repealed, and all other Acts, in so far as inconsistent with the provisions of this Act, are also hereby repealed; provided always, that the assessments authorised and required to be imposed and levied by the said recited Acts, or any of them, shall continue to be imposed and levied according to the said Acts and the law as existing prior to the passing of this Act, to the extent and effect of imposing and levying in each parish in the course of the year immediately ensuing the passing of this Act an assessment equal in amount to that which was imposed and levied in such parish in the course of the year immediately preceding the passing of this Act, and that the proceeds thereof shall be expended according to the provisions of the existing law by the authorities now charged with the administration thereof until school boards shall be elected for the respective parishes, when any portion of the said proceeds which shall then remain unexpended shall be handed over to the said school boards respectively; and further, provided that no vacancy in the office of teacher under the said recited Acts, or any of them, or in the office of teacher in a burgh school, occurring after the passing of this Act, shall be filled up, except under the provisions of this Act. But should a vacancy occur in a parish or burgh before a school board has been elected therefor, it shall be lawful for and shall be the duty of the managers of the school in which it occurs, to make due provision for the temporary discharge of the duties of the vacant office until it can be filled Repeal of Acts at variance with this Act.

A.D. 1872 under this Act;[2] *and provided, that any sum payable to a schoolmaster prior to the passing of this Act, under the Act of the first and second years of the reign of Her present Majesty, chapter eighty-seven, shall continue to be paid to him so long as he holds the office of schoolmaster on account of which such sum was payable to him, and shall thereafter be paid to the school board of the parish in which he held such office, for the purposes of the school fund.*[3]

[1] For summary of provisions of repealed Acts, p. 44, notes 1, 2, 3, and p. 45, note 1. The Acts in full will be found in the Appendix.

[2] The duties of the old managers of the parish and other schools under the recited Acts, and of the burgh schools, are thus limited to—

a. Levying the same assessment as was levied for the year immediately preceding the passing of the Act, and expending the proceeds under the provisions of the old law, until school boards are elected.

b. In the case of a vacancy in the office of teacher, making provision for the temporary discharge of the duties of the vacant office, till it can be filled up according to this Act.

[3] The words printed in italics are repealed by the Highland Schools Act, 1873, which will be found in the Appendix, p. 314.

Saving of rights, &c.

79. Nothing contained in this Act shall interfere with or diminish the powers, rights, and privileges of the trustees of Dr John Milne's bequest, for the promotion of education in the county of Aberdeen, and parish of Banchory-Devenick, in the administration and management of that bequest, or deprive any of the schools entitled at the passing of this Act to participate in said bequest of their right to do so in future, and the grants made by said trustees from the funds under their management, shall continue as heretofore to be paid over by them to the teachers whom they may select to receive the same.

Short title.

80. This Act may be cited for all purposes as "The Education (Scotland) Act, 1872."

SCHEDULE A.

Schedule of Towns.

Name of Town.	Municipal or Managing Body.
Girvan . . .	Bailies and councillors.
Wick and Pulteneytown .	Town council and commissioners.
Alloa	Commissioners of police.
Kirkintilloch . . .	Bailies, treasurer, and councillors.
Dalkeith	Trustees.
Broughty Ferry . .	Commissioners of police.
Bathgate . . .	Commissioners.
Kilsyth . . .	Bailie and councillors.

SCHEDULE B.

General Rules respecting Election of Members of a School Board subsequent to the First Election.

1. The number of members[1] of the school board shall be such number not less than five nor more than fifteen as may be determined by the Scotch Education Department with respect to each parish and burgh, and, within the said limits, the number of the members of any school board may before any triennial election be changed by the said Department.

2. The electors shall consist of all persons being of lawful age, and not subject to any legal incapacity, whose names are entered on the latest valuation roll applicable to the parish or burgh for which the board is to be elected, made up and completed not less than one month prior to the election, as owners or occupiers of lands or heritages of the annual value of not less than four pounds, situated within such parish or burgh; and the valuation roll, or a certified copy thereof, shall be conclusive evidence that the persons therein named had, and continue to have, the qualifications annexed to their names respectively in the said roll.[2]

3. The chairman of the school board shall be the returning officer, and failing him, some person appointed by the school board.[3]

4. *The election shall be held at such times and in such manner, and in accordance with such rules and directions as the Scotch Education Department may from time to time by order prescribe, and the Scotch Education Department may, by order, appoint or direct the appointment of any officers requisite for the purpose of such election, and do all necessary things preliminary or incidental to such election.*

This rule is repealed, and in place thereof is substituted the Schedule of the Act of 1878, which is in the following terms:—

"The triennial election of a school board for any parish or burgh "shall be held at such time and in such manner and in accordance with "such regulations as the Scotch Education Department may from time "to time by order prescribe; and the Scotch Education Department "may by order appoint or direct the appointment, and make regulations "as to the duties, remuneration, and expenses, of any officers requisite "for the purpose of such election, and make regulations respecting all "other necessary things preliminary or incidental to such election, and "revoke or alter any previous order."

5. All expenses incident to the election of a school board (but not including the expenses of any candidate) in any

A.D. 1872 parish or burgh shall be paid by the said school board out of the school fund.

6. At every election every voter shall be entitled to a number of votes equal to the number of the members of the school board to be elected, and may give all such votes to one candidate or may distribute them among the candidates as he sees fit.

[1] The members of the school board going out of office, may be re-elected to the new school board.

[2] Cf. authorities cited under Sect. 12, subsect. 2.

[3] If the chairman proposes to stand for re-election, the school board should appoint the returning officer, who should not be the chairman.

[4] *Expenses.*—Downie *v.* School Board of Annan, p. 250; Dodds *v.* School Board of Bathgate, p. 251.

SCHEDULE C.

Name of Burgh.	Name of School.
Aberdeen	New grammar school.
Ayr	Academy.
Dumfries	Academy.
Edinburgh	High school.
Elgin	Academy.
Glasgow	High school.
Haddington	Burgh school.
Montrose	Academy.
Paisley	Grammar school and academy.
Perth	Academy.
Stirling	High school.

The following schools have been erected into higher class public schools since the passing of the Act:—

Arbroath	High school.
Hamilton	Academy.
Irvine	Academy.
Leith	High school.
Peebles	Bonnington Park school.
Dunfermline	Grammar school.

PART III.

SUMMARY OF THE EDUCATION ACT, 1878.

PART III.

SUMMARY.

I. GENERAL PROVISIONS.

Sections 1, 3, 4, 27.

Title.

THE Act may be cited as the Education (Scotland) Act, 1878, and it and the Education (Scotland) Act, 1872, may be cited together as the Education (Scotland) Acts, 1872 and 1878.

The Act of 1872 is, in this Act, called the Principal Act. Sect. 1.

Commencement.

The Act comes into operation on the 1st of October 1878. Sect. 3.

Construction.

The Act is to be construed as one with the principal Act, and the expression "this Act" in the principal Act is held to include the Act of 1872 and the Act of 1878. Sect. 4.

Schedules.

The Schedules to the principal Act and to this Act are to be of the same force as if they were enacted in these Acts respectively. Sect. 27.

I. CONSTITUTION OF SCHOOL DISTRICTS.

Sections 29, 30.

Union of School Boards.

The Department, on receiving applications from the school boards of the parish and burgh respectively, may unite any parish in which no school has been erected by the school board thereof to an adjoining burgh for school board purposes, and order a school board to be elected for the burgh. Sect. 29.

Extension of Burgh Area will not alter School Board Area.

The extension of a burgh for municipal or police purposes will not alter for school board purposes the area of the burgh so extended; nor will it alter the area of the parish from which the extension has been taken.

But the Department may order the annexation of the parochial part of the district to the burgh for school board purposes.

The valuation roll of the extended burgh, so far as it relates to the parochial part of the district, will, for school board purposes, be deemed to be the valuation roll of the county applicable to the parish unless and until the annexation takes place. Sect. 30.

II. MANAGEMENT.

Sections 15, 16, 17, 21, 25, 26, and Schedule.

Arrangements for Election of School Boards.

The triennial elections both in parishes and in burghs are to be held at such time, and in such manner, and in accordance with such regulations as may be prescribed by the Department.

The Department are authorised to appoint officers to conduct the elections; they are further to make rules as to duties,

remuneration, and expenses of the officers; and they are generally to regulate the elections. Sect. 26 and Schedule.

Access to Valuation Roll free of Charge.

Clerks of school boards, or other persons authorised by school boards, can have access to the valuation rolls applicable to their districts free of charge for the purpose of making copies of the roll or of entries in the roll.

Clerks of Supply, town clerks, or other officers in charge of the roll, must give access in their official chambers; or where there are no official chambers, in some public place appointed by the sheriff. Sect. 25.

Resignation of Members of School Boards.

A member of a school board may resign on giving a month's notice in writing to the board.

The board may within eight weeks of the vacancy nominate a successor.

Vacancies.

If they fail to do so within this time, the Department may either nominate a person to fill up the vacancy, or issue orders for an election of a member. Sect. 15.

Disqualification for Non-Attendance.

A member who has been absent for six successive months from all meetings of the board ceases to be a member, unless he has been prevented from attending by temporary illness or some other cause approved by the board. Sect. 16.

Quorum.

If from any cause there shall cease to be a quorum, the Department may supply the deficiency either by nominating members or by ordinary election of a sufficient number of members. Sect. 17.

Office of Profit under School Board disqualifies for Membership or for post of Manager.

No person who holds an office of profit under a school board is eligible, or capable of acting, as a member of the board, or as a school manager under the board. Sect. 21.

III. SUPPLY OF SCHOOL ACCOMMODATION.

Section 31.

Compulsory purchase of Sites.

The Lands Clauses Consolidation (Scotland) Act, 1845, with its amending Act, is incorporated with this Act, except the provisions relating to access to the special Act.

In construing those Acts for the purposes of this section, the Special Act means the principal Act, this Act, and the confirming Act hereinafter mentioned: the promoters of the undertaking means the school board. Land includes any right over land.

Procedure and Regulations. Publication of Notices.

The school board must publish for three consecutive weeks in October or November, a notice describing the object for which the land is to be taken, naming a place where the plan of the land may be seen, and stating the quantity of land required.

Service of Notices.

After publication, the school board must serve a notice on the owners, lessees, and occupiers of the land to be taken, defining the particular land, and requiring answers from the persons so served.

Notices may be served personally or by registered letter.

Petition to Department.

After publication and service of notices, the school board may petition the Department for an order authorising the school board to put in force the powers of the Act.

The Department may order an inquiry to be held in the district respecting the propriety of the proposed site, and a report to them, and thereafter they may issue an order authorising the school board to put in force the powers of the Act; and this order the school board must serve upon the persons interested in the land.

Costs.

All costs and expenses incurred by the Department or allowed to a proprietor in relation to the order and purchase, become a charge upon the school fund of the parish or burgh to which the order relates, to be paid by annual instalments with interest. Sect. 31.

In connection with these provisions, and the provisions contained in sections 37, 38, and 39 of the principal Act regarding the proceedings for providing schools and the transference of existing schools, reference is made to the Free Church of Scotland School Properties Act, 1878, which will be found in the Appendix, p. 317.

IV. FINANCE AND PARLIAMENTARY GRANT.

Section 32.

Parochial Board to pay over School Rate without Deduction.

Parochial boards are bound to pay over to school boards the school rate, or any sums required to be levied, to meet deficiencies in the school fund, without deduction on account of the cost of levying and collecting the same. Sect. 32.

V. TEACHERS.

Section 24.

Parliamentary Franchise.

Teachers may be placed on the register of voters for the election of Members of Parliament, in respect of the lands and heritages which they occupy under school boards, notwithstanding that the said lands and heritages are held as part of the emoluments of office, and at the pleasure of the school boards.

Provided that the rental of such lands and heritages are of sufficient annual value to qualify a voter. Sect. 24.

VI. HIGHER CLASS PUBLIC SCHOOLS.

Sections 18, 19, 20.

Funds—Expenses of School Building,

School boards which have the management of higher class public schools are bound to maintain the buildings out of the school fund, in the same manner in which they are bound to maintain the buildings of any other school under their management.

Expenses for the Promotion of Efficient Education.

School boards are empowered to pay from the school fund such other expenses for the promotion of efficient education as are not provided for by the revenues mentioned in section 62 of the principal Act.

But no expenditure under this section can be incurred without the consent of the Department.

The power of borrowing by school boards from the Public Works Loan Commissioners is not affected by this section. Sect. 18.

Examinations [redacted] Of Higher Class Schools under Private Authorities.

The Department are empowered to make provision for the examination of higher class schools under the management of authorities other than school boards, on two conditions:—

1. That the authority desiring to have the school under its management examined, applies to the Department.

2. That the authority undertakes to pay such sum towards the incidents of the examination as the Department may fix. Sect. 19.

b. Of Higher Class Public Schools under School Boards.

The Department are further empowered to make provision for the examination of higher class public schools under the management of school boards. Examinations held in accordance with this provision are to take the place of examinations under section 62 of the principal Act. Sect. 20.

In connection with these provisions and the provisions in the principal Act regarding higher class public schools, reference is made to the Endowed Institutions (Scotland) Act, 1878, which will be found in the Appendix, p. 325.

VII. MISCELLANEOUS PROVISIONS.

Sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 22, 23, 26.

Appeal from Parochial Board on refusal to pay School Fees.

If a parochial board in any parish or burgh refuse to pay school fees for the children of a parent who is unable through poverty to pay them, the school board are bound to appeal to the sheriff, and the sheriff may grant an order on the parochial board to pay. Sect. 22.

Regulations as to the employment of Children—Children under ten years of age.

No one may employ a child under ten years of age for gain in any employment whatever. Sects. 5, 6.

Children between ten and fourteen.

No one may employ a child between ten and fourteen for gain in any employment whatever after seven o'clock at night in winter—*i.e.*, from October to April; or after nine o'clock at night in summer—*i.e.*, from April to October.

This regulation applies to "casual" as well as to regular employment.

"Casual" employment defined.

"Casual" employment means employment for purposes of gain in streets or other places in vending or exposing for sale any article whatsoever, and also employment of any other kind outside the child's house, not being employment the lawful period whereof is regulated by any Act of Parliament. Sects. 5, 6.

Exemptions from these Regulations.

These regulations are modified by the following exemptions:

1. The absence of an inspected school within three miles of the child's residence exempts.
2. A certificate in the case of a child over ten years of age of ability to read and write and of a knowledge of elementary arithmetic, granted by one of H.M. Inspectors of Schools, exempts.
3. Attendance at school under the provisions of the Factory and Workshops Acts, or of the Mines Regulation Act, or of a Departmental Minute, exempts.
4. Proof that the employment was during the holidays, or during hours (not being hours when casual employment is prohibited) when the school is not open, exempts.
5. Special permission by a school board in the case of an individual child under section 6 exempts.
6. Permission by the school board of a district for a period not exceeding six weeks in any one year during the harvest or fishing season, or for the necessary operations of husbandry, exempts.

Copies of every notice granting permission under the 6th exemption must be affixed to the doors of all churches and schools in the district. Sects. 5, 6, 7.

Enforcement of Regulations by School Boards.

School boards, through their officers, are authorised to take proceedings in their districts against defaulters either for neglect of education or for undue employment of children, before either the Sheriff or two Justices of Peace, whose judgment is final.

Proceedings are to be taken under the Education Acts of 1872 and 1878, and the Summary Procedure Act of 1864.

They may be repeated against a parent after the lapse of one month.

By Inspectors under Factory, Workshops, and Mining Acts.

In factory, workshop, and mining cases proceedings are to be taken by the Inspectors and Sub-inspectors, and not by the school boards; but the latter are bound to assist the Inspectors and Sub-inspectors in the performance of their duties.

Expenses of Prosecution.

Expenses cannot be awarded against any person appointed by the school board to prosecute, nor against an Inspector nor Sub-inspector under the Factory, Workshops, and Mining Acts. Sects. 10, 23, 28.

Penalties.

The penalty for employing children in contravention of this Act is a fine not exceeding forty shillings. Sect. 8.

Parents who employ their children for gain, or who permit them to be employed for gain, on their own behalf, are liable as employers. Sect. 9.

Parents are liable if they procure the employment of their children by means of false certificates or false representations as to the age of their children. Sect. 13.

When it is necessary to ascertain the correct age of a child for the purposes of the Act, a certificate may be obtained on application to the Registrar of the district in which the child was born.

The application must be made according to a prescribed form.

The fee shall not exceed one shilling. Sect. 11.

Agents or workmen of an employer who have committed the offence of employing children in contravention of the Act are liable as employers. Sect. 13.

Exemptions from Penalties in favour of Employers.

An employer is exempted from penalties if he proves that he has used due diligence to enforce the observance of the Act, and either that the child or children in his employment were employed by agents or workmen, or by means of false certificates or representations by the parents as to age.

In such cases the school board are bound to institute proceedings against the agent, workman, or parent, and not against the employer. Sect. 13.

Power of School Board Officer to enter place of Employment.

The Sheriff may by order empower a school board officer to enter any place where there is reasonable cause to believe that a child is employed in contravention of the Act, and to examine

the place, and any person found therein, touching such employment.

This power must be exercised within forty-eight hours of the date of the Sheriff's order.

Any person who refuses admission to, or who obstructs the officer in the discharge of his duty, is liable to a penalty not exceeding twenty pounds. Sect. 12.

Temporary Modifications as to application of Act.

The provisions of the Act during twelve months from the commencement—*i.e.*, till October 1, 1879—apply to children of the age of nine as if they were of the age of ten. Sect. 14.

PART IV.

THE EDUCATION (SCOTLAND) ACT, 1878.

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THE EDUCATION (SCOTLAND) ACT, 1878.

41 & 42 VICTORIA, CHAPTER 78.

An Act to further amend the provisions of the Law of Scotland on the subject of Education, and for other purposes connected therewith.—[16*th August* 1878.] A.D. 1878

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title. 35 & 36 Vict. c. 62.

1. This Act may be cited as the Education (Scotland) Act, 1878, and this Act and the Education (Scotland) Act, 1872, (in this Act referred to as the principal Act,) may be cited together as the Education (Scotland) Acts, 1872 and 1878.

Extent of Act.

2. This Act shall extend to Scotland only.

Commencement of Act.

3. This Act shall, except in so far as hereinafter provided, come into operation on the first day of October one thousand eight hundred and seventy-eight (which day is in this Act referred to as the commencement of this Act).

Construction of Act.

4. This Act shall be construed as one with the principal Act, and the expression "this Act" in the principal Act shall be construed to include this Act.

Regulation as to employment of

5. A person shall not, after the commencement of this Act, take into his employment (except as hereinafter in this Act mentioned) any child—

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child under 10, and certificate of knowledge being condition of employment of child over 10.

(1.) Who is under the age of ten years; or

(2.) Who, being of the age of ten years, and not more than fourteen years, has not obtained a certificate of ability to read and write, and of a knowledge of elementary arithmetic in terms of section seventy-three of the principal Act, unless such child being of the age of ten years or upwards is employed and is attending school in accordance with the provisions of any Act of Parliament regulating the education of children employed in labour, or of any minute of the Scotch Education Department fixing the standard of education to be required for the partial exemption of children from the obligation to attend school.

Certificate.—Cf. minutes of Department fixing standards for certificates, p. 457.

Sect. 5 in the first place prohibits the employment of children under the age of ten years subject to the exceptions mentioned in Sect. 7; and further prohibits the employment of children above ten and below fourteen years of age, unless they hold certificates of proficiency, or unless they are attending school under any of the Statutes regulating the employment of children, or under a Departmental minute fixing the standard for partial exemption. The more important Statutes regulating the employment of children were consolidated by the Factory and Workshop Act, 1878, 41 & 42 Vict. c. 16, which is partly printed in the Appendix. The rules vary with respect to textile factories, non-textile factories, workshops, and domestic workshops. (1.) As regards *textile factories*, children must be employed on the system of morning and afternoon sets, or of employment of alternate days. Except on Saturdays, the morning set lasts from 6 or 7 A.M. to 1 P.M. or dinner time, and the afternoon set lasts from 1 P.M. or after dinner till 7 P.M. On Saturday the hours are from 6 or 7 A.M. to 12.30 or 1 P.M., according to the length of the meal hour. A child is not to be employed for two successive weeks in a morning or an afternoon set, or on two successive Saturdays, or on Saturday at all if on any day in the week he has worked more than 5½ hours. Under the alternate day system, the child (with the same general working hours) must not be employed on the same day of the week for two successive weeks. On either system no child may be worked for 4½ hours without half an hour for a meal (Sect. 12). (2.) As regards *non-textile factories and workshops* also, the employment must be by the morning and afternoon sets or by alternate days. Much the same hours are followed, and much the same restrictions, as in the case of textile factories, the child being entitled to two hours in the day for meals, and on Saturday half an hour. In every period of five hours of work there must be an interval of half an hour for a meal (Sect. 14). (3.) As regards domestic workshops—*i.e.*, where persons are employed in a private house, in which neither steam, water, nor other mechanical power is used in aid of the manufacturing process, and where the persons employed are members of the same family dwelling there, work lasts from 6 A.M. to 1 P.M., or from 1 P.M. to 6 P.M. Children are not to be employed before 1 P.M. or after 1 P.M. in any two successive weeks (Sect. 16). As regards the education of children, the child must give one attendance every day when employed on the morn-

ing or afternoon set, and two attendances on every free day under the alternate day system. These attendances must be between 8 A.M. and 6 P.M., and at a school under inspection, but it may be selected by the parent. The Department publish lists of inspected schools. The attendances may be given at a certified day industrial school. Holidays, sickness, and distance from school, form excuses from attendance (Sect. 23). The occupier of the factory is bound every week to obtain from the school teacher a certificate of the child's attendance (Sect. 24). The school board may demand from the employer a weekly sum, not exceeding 3d., out of the child's wages (Sect. 25). The employer is bound to keep a register of the children in his factory (Sect. 77). For the fines inflicted on employers and parents for contravention of the Act, see Sect. 83 and 84. For the definitions of textile and non-textile factory and workshop, see Sect. 93 and 94. The application of the Act to Scotland is regulated by Sect. 103 and 105 (especially subsections 1, 2, 15, 16, 17, 18, and 19). A.D. 1878

Next in importance to the Factory and Workshops Act is the Coal Mines Regulation Act, 1872, 35 & 36 Vict. c. 76. It prohibits the employment *below ground* of boys under the age of ten, and of women and girls of any age (Sect. 4). Boys between the ages of ten and twelve may be employed *below ground* only in mines where a Secretary of State considers such employment necessary by reason of the thinness of the seams, and even in such cases not for more than six days a-week; if employed for more than three days a-week, not for more than six hours a-day, otherwise not for more than ten hours a-day (Sect. 5). Boys aged twelve but under thirteen may not be employed *below ground* more than fifty-four hours a-week or ten hours a-day (Sect. 6). An interval of eight hours must be allowed between the periods of employment on Friday and the following Saturday; in other cases, an interval of twelve hours (Sect. 7). Every boy between the ages of ten and twelve who is employed *below ground* must attend school at least twenty hours every two weeks; but attendance on Sundays, or before 8 A.M., or after 6 P.M., or in excess of three hours at a time, or of five hours a-day, or of twelve hours a-week, is not computed. This and the following provisions apply to all children under thirteen employed *above ground*. Non-attendance is excused when the school is closed for holidays, or some other temporary cause; when there is no school within two miles from the mine or the residence of the child; and when the child is certified by the principal school teacher to have been prevented from attendance by sickness or other necessary cause. The immediate employer is directed to obtain every Monday from the principal teacher a certificate that the child has properly attended during the preceding week. This certificate, of which the form is No. 5 official, issued with circular from the Home Office, dated 28th November 1872, must be kept by the owner, agent, or manager for six months, for production to the inspector (sect. 8). The person who pays the child's wages must, after a single application of the teacher, pay regularly every week the cost of the child's schooling (not exceeding 2d. a-week, or one-twelfth of the child's wages). He may deduct this from the wages (sect. 9). A mine inspector may, on the grounds mentioned in the Act, and subject to an appeal to the Department, disqualify a teacher for granting certificates (sect. 10). The mine owner is directed to keep a register of the various classes of children, young persons, and women whom he employs, and a memorandum of the certificates of school attendance (sect. 13). The form of this is No. 4 official, issued as above. The penalty on a parent for a failure in school attendance of a child is 20s.

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These provisions relative to education do not appear in the Metalliferous Mines Regulation Act, 35 & 36 Vict. c. 77. It may be explained that the Coal Mines Act applies only to mines of coal, of stratified ironstone, of shale, and of fire-clay.

Restriction on casual employment of children.

6. After the commencement of this Act no child under the age of ten years shall, save as herein-after mentioned, be employed in any casual employment, and no child who is above the age of ten years but under the age of fourteen years shall, save as aforesaid, unless he has obtained a certificate of ability to read and write, and of a knowledge of elementary arithmetic in terms of section seventy-three of the principal Act, be employed in any casual employment after nine o'clock at night, from the first day of April to the first day of October, and after seven o'clock at night from the first day of October to the first day of April.

Casual employment shall mean employment for purposes of gain in streets or other places in vending or exposing for sale any article whatsoever, and also employment of any other kind, outside the child's own home, not being employment, the lawful period whereof is regulated by any Act of Parliament.[1]

[1] This provision as to "casual" employment is introduced principally to meet the cases of newspaper boys and others of that class in the large towns.

A school board may, by writing under the hand of the clerk, exempt from the prohibitions of this section any child for a period or periods named in such writing, and not exceeding in the whole six weeks, between the first day of January and the thirty-first day of December in any year.

Exception to prohibition of employment of children.

7. A person shall not be deemed to have taken any child into his employment contrary to the provisions of this Act, if it is proved to the satisfaction of the sheriff either—

(1.) That during the employment there is not within three miles, measured according to the nearest road, from the residence of such child any inspected school open which the child can attend; or,

(2.) That such employment is during the school holidays, or during the hours during which the school is not open, not being hours during which casual employment is herein-before prohibited; or,

(3.) That the employment is exempted by the notice of the school board herein-after next mentioned; (that is to say,)

The school board may, if it thinks fit, issue a notice exempting from the prohibitions and restrictions of

this Act the employment of children above the age of eight years, for the necessary operations of husbandry and the ingathering of crops or to give assistance in the fisheries for the period to be named in such notice: Provided that the period or periods so named by any such school board shall not exceed in the whole six weeks between the first day of January and the thirty-first day of December in any year.

The school board shall cause a copy of every notice so issued to be affixed to the door of all churches and schools in the district.

Penalty for employing a child in contravention of Act.

8. Every person who takes a child into his employment in contravention of this Act shall be liable, on summary conviction, to a penalty not exceeding forty shillings.

Definition of employment in case of parent.

9. A parent of a child who employs such child in any labour exercised by way of trade or for the purposes of gain, or who permits such child to be engaged in any such labour on its own behalf, shall be deemed for the purposes of this Act to take such child into his employment.

Enforcement of Act by school board or by inspectors of factories, &c.

10. The provisions of this Act respecting the employment of children shall be enforced in the district of every school board by that board, provided that it shall be the duty of the inspectors and sub-inspectors acting under the Acts regulating factories, workshops, and mines respectively, and not of the school board, to enforce the observance by the employers of children of the provisions of this Act respecting the employment of children in such factories, workshops, and mines; but it shall be the duty of the school board to assist the said inspectors and sub-inspectors in the performance of their duty by information and otherwise.[1]

[1] Cf. provisions of the Factory and Workshops Act of 1878 bearing on this, especially Sects. 23-26, Appendix, p. 334.

It would thus appear to be the duty of the school board to prosecute *parents* in every case, and to prosecute *employers* to whom the provisions of the Factory Workshop and Mines Regulation Acts do not apply.

Certificates of birth for purposes of Acts.

11. Where the age of any child is required to be ascertained or proved for the purposes of this Act, any person, on presenting a written requisition in such form, and containing such particulars as may be from time to time prescribed by a Secretary of State, and on payment of such fee, not exceeding one shilling, as a Secretary of State from time to time fixes, shall be entitled to obtain an extract under the hand of the registrar, under the Act of the seventeenth and eighteenth years of Her present Majesty, chapter eighty, and any Acts amending the same, of the entry in the registry kept under those Acts.

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Power of officer of school board to enter place of employment.

12. If it appears to any sheriff, on the complaint of an officer of a school board acting under this Act, that there is reasonable cause to believe that a child is employed in contravention of this Act in any place, whether a building or not, such sheriff may by order under his hand empower an officer of the school board to enter such place at any reasonable time within forty-eight hours from the date of the order, and examine such place, and any person found therein touching the employment of any child therein.

Any person refusing admission to an officer authorised by an order under this section, or obstructing him in the discharge of his duty, shall for each offence be liable on summary conviction before the sheriff to a penalty not exceeding twenty pounds.

Exemption of employer on proof of guilt of some other person.

13. Where the offence of taking a child into employment in contravention of this Act is in fact committed by an agent or workman of the employer, such agent or workman shall be liable to a penalty as if he were the employer.

Where a child is taken into employment in contravention of this Act on the production by, or with the privity of, the parent of a false or forged certificate, or on the false representation of his parent that the child is of an age at which such employment is not in contravention of this Act, that parent shall be liable to a penalty not exceeding forty shillings.

Where an employer charged with taking a child into his employment in contravention of this Act proves that he has used due diligence to enforce the observance of this Act, and either that some agent or workman of his employed the child without his knowledge or consent, or that the child was employed either on the production of a forged or false certificate, and under the belief in good faith in the genuineness and truth of such certificate, or on the representation by his parent that the child was of an age at which his employment would not be in contravention of this Act, and under the belief in good faith in such representation, the employer shall be exempt from any penalty.

Where an employer satisfies the school board or other person about to institute a prosecution that he is exempt under this section by reason of some agent, workman, or parent being guilty, and gives all facilities in his power for proceeding against, and convicting such agent, workman, or parent, such school board, or person, shall institute proceedings against such agent, workman, or parent, and not against the employer.

Temporary modification as

14. The provisions of this Act shall, during twelve months after the commencement of this Act, apply to children of the

age of nine years and upwards as if they were of the age of ten years and upwards. A.D. 1878

15. A member of a school board may resign on giving to the board one month's previous notice in writing of his intention so to do.[1] The vacancy so caused shall, where a quorum remains, be supplied by the school board in the manner provided in section thirteen of the principal Act; and if the school board fail for eight weeks to fill up the vacancy, the Scotch Education Department may nominate a person to fill such vacancy, or may issue an order for an election of a person to fill such vacancy at such time and place and in such manner as the said department shall determine. Resignation of member of school board, and supplying vacancy.

[1] This provision meets the difficulty as to resignation raised in the Hamilton case, 1873, and the Edinburgh case, 1874, p. 163.

16. If a member of a school board absents himself during six successive months from all meetings of the board, except from temporary illness or other cause to be approved by the board, such person shall cease to be a member of the school board, and his office shall thereupon be vacant.[1] Disqualification of member of school board for non-attendance.

[1] This provision and the provision in Section 17 regarding the absence of a quorum have been rendered necessary by the action of members of school boards to bring about a dead-lock in the business of their boards.

17. If by the death, resignation, or disqualification of any member or members of a school board there shall cease to be a quorum, the Scotch Education Department may nominate as many persons as shall be necessary to make up the full number of members, or may issue an order for an election of such number of members at such time and place and in such manner as the said department shall determine. Proceedings where quorum fails by death, &c.

18. A school board having the management of any school which is a higher class public school within the meaning of the principal Act shall maintain the buildings thereof out of the school fund in the same manner in which it is bound to maintain the buildings of any other school under its management,[1] and shall be empowered to pay from the school fund such other expenses for the promotion of efficient education in the said school as are not provided for by the revenues stated in section sixty-two of the principal Act:[2] Provided that no expenditure under this section shall be incurred without the consent of the Scotch Education Department; and provided that nothing contained in this section shall in any way affect the powers of borrowing from the Public Works Loan Commissioners conferred on school boards by the principal Act. Expenses of higher class school buildings may be paid out of school fund and charged on rates.

A.D. 1878

[1] This provision meets the difficulty as to the repairs of the higher class school buildings raised in the Edinburgh High School case, March 1874, p. 242.

[2] Cf. note on higher class public schools in Part I., p. 371.

Examination of higher class schools.

19. When an authority other than a school board having under its management a public or other school in which the education given does not consist chiefly of elementary instruction in reading, writing, and arithmetic, but of instruction in Latin, Greek, modern languages, mathematics, natural science, and generally in the higher branches of knowledge, shall apply to the Scotch Education Department for the examination of such school, with a view to ascertain its general efficiency, and with reference to the higher branches of knowledge taught therein, and shall undertake to pay towards the expenses incident to such examination such sum as the Scotch Education Department may fix, it shall be lawful for the Scotch Education Department to make provision for such examination either by one or more of Her Majesty's inspectors of schools, or by such other person or persons as the Scotch Education Department may appoint for the purpose.

Examination of higher class schools under management of school boards.

20. When a school board having under its management a public or other school in which the education given does not consist chiefly of elementary instruction in reading, writing, and arithmetic, but of instruction in Latin, Greek, modern languages, mathematics, natural science, and generally in the higher branches of knowledge, shall apply to the Scotch Education Department for the examination of such school, with a view to ascertain its general efficiency, and with reference to the higher branches of knowledge taught therein, it shall be lawful for the Scotch Education Department to make provision for such examination either by one or more of Her Majesty's Inspectors of Schools, or by such other person or persons as the Scotch Education Department may appoint for the purpose. When a higher class public school shall have been examined under the provisions of this section, such examination shall come in place of an examination under section sixty-two of the principal Act.

Office under board to disqualify from being member of school board.

21. No person holding an office of profit under a school board in any parish or burgh shall be eligible or shall be capable of acting as a member of such school board or as a manager under section twenty-two of the principal Act.[1]

[1] Cf. in connection with this section the Leith case, December 1873, and the General case, June 25, 1875, in which opinions of counsel are given as to contracts entered into between members of school boards and their boards. These cases will be found in Part V., pp. 182, 183.

Procedure where parochial board refuse to pay school fees.

22. If a parent is unable from poverty to pay for the elementary education in reading, writing, and arithmetic of his child or children between five and thirteen years of age, and if, upon application, the parochial board of the parish or burgh in which he resides refuses to pay out of the poor fund the ordinary and reasonable fees of such child or children, it shall be the duty of the school board to apply to the sheriff, who, after inquiry, may, if he shall think fit, grant an order on such parochial board to pay the said fees, and such order may dispose of all question of expense.[1]

[1] This provision meets the point decided in Callachan v. Paterson, September 1876, and in the Glasgow case, July 1874, and Macpherson v. Fowler (Part V., pp. 243, 244), in which it was held that the parochial board are the sole judges whether a parent is unable by poverty to pay fees.

Mode of procedure and expenses of prosecutions. 27 & 28 Vict. c. 53.

23. Every prosecution for penalties or other proceedings under the principal Act, or this Act, may take place before the sheriff (whose judgment shall be final) under the provisions of the Summary Procedure Act, 1864, and in all proceedings under the principal Act or this Act any person appointed by the school board, or any inspector or sub-inspector of factories, workshops, or mines, may appear before the sheriff and conduct such proceedings.

Where proceedings shall be taken under sections seventy and seventy-one of the principal Act, or under this Act, it shall not be lawful to award expenses against (1) any person appointed by the school board to prosecute, whether that person is or is not a procurator fiscal; or (2) against any inspector or sub-inspector acting under the Acts regulating factories, workshops, or mines respectively. Any prosecution for penalties under the principal Act or this Act which may take place before the sheriff may take place also before any two justices of the peace sitting in open court, and any order which under this Act may be made by the sheriff may be made by such justices, whose judgments and orders shall be final, and not subject to review.

In the principal Act and this Act "sheriff" shall include "sheriff-substitute."[1]

[1] An important alteration in the tribunal before which proceedings may be taken is effected by this provision. The difficulty of instituting proceedings before the sheriff has been seriously felt in parishes and districts, especially in the Highlands, which are at a distance from the sheriff courts. Power to prosecute before the justices will simplify the proceedings.

No provision has been made to meet the question whether procurator-fiscals are entitled to charge fees for prosecutions.

It cannot be supposed that the language of Section 23 authorises pro-

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secution by an inspector or sub-inspector in every case. The language must be applied to those cases in which the inspector or sub-inspector has an interest and a duty to prosecute under Section 10.

Removal of doubt as to right of certain school-masters to the franchise.

24. Whereas doubts have arisen as to the right of a teacher of a public school under a school board, who holds office at the pleasure of the board, and who occupies as part of the emoluments of his office lands and heritages under the school board to be registered as a voter and to vote at elections for a member or members to serve in Parliament, in respect of the qualification afforded by such lands and heritages: And whereas it is expedient that such doubts should be removed, be it enacted, that from and after the passing of this Act it shall be no objection to the name of any such teacher being placed on the register of voters for the burgh or county within which such lands and heritages are situate, that the lands and heritages occupied by him and on which his claim to the franchise rests, are held as part of the emoluments of his office, and at the pleasure of the school board: Provided, that the rental of such lands and heritages, according to the valuation roll, shall be of sufficient annual value to qualify a voter.[1]

[1] This section was construed, in the case of Murray *v.* Morton, p. 223, where it was held to restore teachers to the position of liferent proprietors as regards the franchise, which they held when their tenure of office was *ad vitam aut culpam*.

School board to have access to valuation roll free of charge.

25. The clerk of supply of a county or town clerk of a burgh or other officer who shall have in his possession or under his control any valuation roll shall at all times give, free of charge, reasonable access to such roll, either in his official chambers, or where no such chambers are provided in such public place as the sheriff shall appoint, to the clerk or other person or persons appointed by the school board of any parish within such county or of such burgh for the purpose of making a copy of such roll or of any entries therein.

Amendment of 35 & 36 Vict. c. 62. sch. B.

26. The principal Act shall be construed as if there were substituted for the rule numbered four in Schedule B. to the principal Act the rule in the schedule to this Act.

Effect of schedules.

27. The schedules to the principal Act and to this Act shall be of the same force as if they were enacted in these Acts respectively.

Amendment of clause 70 of principal Act.

28. The principal Act shall be construed as if the words "one month" were substituted for the words "three months" in clause seventy of that Act.[1]

[1] This section authorises proceedings to be repeated against defaulters after the lapse of one month.

29. It shall be lawful for the Scotch Education Department

at any time after the passing of this Act, upon the application of the school board of any parish in which no school has been erected by such board, and of the school board of any adjoining burgh, to order, that from and after the period specified in the order such parish shall cease, for the purposes of the principal Act and this Act, to be a parish, and shall be esteemed to be a part of such burgh within the meaning and for the purposes of the principal Act and this Act, and a school board shall be elected therefor in pursuance of the order, and the Scotch Education Department shall frame and issue all proper rules and directions for carrying such order into execution.[1]

Union of school board.

[1] This section meets the difficulty raised in the case of the Parish School Board of Selkirk *v.* the Burgh School Board of Selkirk, June 5, 1875, p. 171.

30. Where by any local Act, or under the powers of any public general Act, the area of any burgh shall hereafter be extended for municipal or police purposes, such extension shall not alter for the purposes of the principal Act or this Act the area of such burgh or the area of any parish from which any district shall be taken for such extension; and the valuation roll of such extended burgh, so far as it relates to such district, shall, for the purposes of the principal Act and this Act, be held to be a part of the valuation roll of the county applicable to such parish, unless and until such district be annexed to the said burgh for those purposes in manner hereinafter mentioned: Provided always, that the Scotch Education Department may at any time, after due inquiry, order such district to be annexed to such burgh for the purposes of the principal Act and this Act, upon such terms and subject to such arrangements as the said Department may determine.[1]

Extension of burghs for municipal purposes not to alter school board areas unless otherwise ordered by Scotch Education Department.

[1] Cf. in reference to this provision the case of Renfrew Burgh School Board *v.* Renfrew Parish School Board, November 15, 1875, p. 156.

31. With respect to the purchase of land by school boards for the purposes of the Education (Scotland) Acts, 1872 and 1878, the following provisions shall have effect; (that is to say,)

Compulsory purchase of sites.

(1.) The Lands Clauses Consolidation (Scotland) Act, 1845, and the Acts amending the same, shall be incorporated with this Act, except the provisions relating to access to the special Act; and in construing those Acts for the purposes of this section the special Act shall be construed to mean the principal Act and this Act, together with the confirming Act herein-after mentioned, and the promoters of the undertaking shall be construed to mean the

41 & 42 Vict. c. 78. 8 & 9 Vict. c. 19.

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school board, and land shall be construed to include any right over land:

Regulations as to the purchase of land compulsorily.

(2.) The school board, before putting in force any of the powers of the said Acts with respect to the purchase and taking of land otherwise than by agreement, shall—

Publication of notices.

(*a.*) Publish during three consecutive weeks in the months of October and November, or either of them, a notice describing shortly the object for which the land is proposed to be taken, naming a place where a plan of the land proposed to be taken may be seen at all reasonable hours, and stating the quantity of land that they require, and shall further,—

Service of notices.

(*b.*) After such publication, serve a notice in manner mentioned in this section on every owner or reputed owner, lessee or reputed lessee, and occupier of such land, defining in each case the particular land intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such land;

(*c.*) Such notice shall be served—

(a.) By delivery of the same personally on the person required to be served, or, if such person is absent abroad, to his agent; or

(b.) By leaving the same at the usual or last known place of abode of such person as aforesaid, or by forwarding the same by post in a registered letter addressed to the usual or last known place of abode of such person:

Petition to Education Department.

(3.) Upon compliance with the provisions contained in this section with respect to notices, the school board may, if they think fit, present a petition to the Scotch Education Department (herein-after called "the Department"), praying that an order may be made authorising the school board to put in force the powers of the said Acts with respect to the purchase and taking of land otherwise than by agreement, so far as regards the land therein mentioned; the petition shall state the land intended to be taken, and the purposes for which it is required, and the names of the owners, lessees, and occupiers of land who have assented, dissented, or are neuter in respect of the taking of such land, or

who have returned no answer to the notice, and shall be supported by such evidence as the department may from time to time require:

(4.) If on consideration of the petition and proof of the publication and service of the proper notices the department think fit to proceed with the case, they may, if they think fit, appoint some person to inquire in the district in which the land is situate respecting the propriety of the proposed order, and also direct such person to hold a public inquiry:

(5.) After such consideration and proof, and after receiving a report made upon any such inquiry, the department may make the order prayed for, authorising the school board to put in force with reference to the land referred to in such order the powers of the said Acts with respect to the purchase and taking of land otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as they may think fit; and it shall be the duty of the school board to serve a copy of any order so made in the manner and upon the persons in which and upon whom notices in respect of the land to which the order relates are required by this Act to be served:

No order valid until confirmed by Parliament.

(6.) No order so made shall be of any validity unless the same has been confirmed by Act of Parliament, and it shall be lawful for the department, as soon as conveniently may be, to obtain such confirmation, and the Act confirming such order (herein called the confirming Act) shall be deemed to be a public general Act of Parliament:

Costs how to be defrayed.

(7.) The department, in case of their refusing or modifying such order, may make such order as they think fit for the allowance of the costs, charges, and expenses of any person whose land is proposed to be taken of and incident to such application and inquiry respectively:

(8.) All costs, charges, and expenses incurred by the department in relation to any order under this section shall, to such amount as the Commissioners of Her Majesty's Treasury think proper to direct, and all costs, charges, and expenses of any person which shall be so allowed by the department as aforesaid, shall become a charge upon the school fund of the parish or burgh to which such order relates, and be repaid to the said Commissioners of Her Majesty's Treasury or to such person

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respectively, by annual instalments not exceeding five, together with interest after the yearly rate of five pounds in the hundred, to be computed from the date of any such direction of the said Commissioners or allowance of such costs, charges, and expenses respectively upon so much of the principal sum due in respect of the said costs, charges, and expenses as may from time to time remain unpaid.[1]

[1] In the Appendix, p. 263, will be found the clauses of the Lands Clauses Consolidation (Scotland) Act, 1845, and the amending Acts bearing on the provisions contained in this section. It has been held, on the English Education Act, 1870, and the English Lands Clauses Act, 1845, that the school board are entitled to erect buildings on the land acquired on such a plan, of such a height and in such a way as they think proper, subject to payment of compensation for injuriously affecting such right over land as the right to light or air. Clark *v.* London School Board, L. R., 9 Ch., App., 120.—In *re Morley*, 32 L. T., N. S., 524, it was held that the costs of obtaining a provisional order for the construction of a tramway were to be taxed, not according to the Parliamentary scale, but according to that adopted in the courts of law.

Parochial board to pay over school rate without deduction.

32. When, under section forty-four of the principal Act, a parochial board is required by a school board to levy by means of a local rate any sum required to meet a deficiency in the school fund, or to levy an amount of rate on each pound of rental as school rate, the parochial board shall pay over to the school board such sum or the produce of such rate, as the case may be, without any deduction on account of the cost of levying and collecting such sum or rate.[1]

[1] This provision puts beyond dispute the questions raised in the Cargill and Muthill case, June 1874, where the parochial board consulted counsel on the point whether they were entitled to deduct the cost of collection. Cf. p. 190.

SCHEDULE.

The triennial election of a school board for any parish or burgh shall be held at such time and in such manner and in accordance with such regulations as the Scotch Education Department may from time to time by order prescribe; and the Scotch Education Department may by order appoint or direct the appointment, and make regulations as to the duties, remuneration, and expenses, of any officers requisite for the purpose of such election, and make regulations respecting all other necessary things preliminary or incidental to such election, and revoke or alter any previous order.

PART V.

DECISIONS IN COURT OF SESSION AND SHERIFF COURTS;

WITH

EXTRACTS FROM OPINIONS OF COUNSEL.

PART V.

DECISIONS IN THE COURT OF SESSION AND SHERIFF COURTS

RELATING TO

THE PROVISIONS OF THE EDUCATION ACT;

WITH EXTRACTS FROM OPINIONS OF COUNSEL.

NOTE.—The Decisions, &c., are arranged, so far as possible, in conformity with the summary of the Act in Part I., under the following headings :—

I. Constitution of School Districts.—(Sects. 1, 8, 9, 10, 11, 17.)

II. Election of School Boards and Management.—(Sects. 3, 4, 5, 8, 12-22, 48, 52, 57, 58, 67, 70.)

III. Supply of School Accommodation.—(Sects. 23-42.)

IV. Finance and Parliamentary Grant.—(Sects. 43-53, 67, 70, 78.)

V. Teachers.—(Sects. 54-61, 76-78.)

VI. Higher Class Schools.—(Sects. 62-64.)

VII. Miscellaneous Provisions.—(Sects. 65-80.) *E.g.*, Inspection—(Sect. 66); Conscience Clause—(Sect. 68); Compulsory Attendance—(Sects. 69-73); Repeal of Acts—(Sect. 78).

I.—CONSTITUTION OF SCHOOL DISTRICTS.

SECTIONS 1, 8, 9, 10, 11, 17.

Disputes as to the Area of School Districts. Sect. 9.

The power of determination conferred by Sect. 9 upon the Board of Education is not confined to the case of a parish in which there is a burgh or a part of a burgh.—*School Board of Lochgilphead* v. *School Board of South Knapdale*, 30th January 1877.

The Board must decide, not arbitrarily, but according to the facts and the law of each case.—*Do.*

Their determination is final, but they must hear all parties.—*Do.*

They ought to send legal questions to the sheriff.—*Do.*

Area of a Burgh. Sect. 9.

Where the area of municipal and parliamentary boundaries has been adopted under Sect. 9, and a police assessment is afterwards levied for the first time in the area of the ancient royalty, the school board desiring an alteration of area must apply to the Board of Education.—*Renfrew Burgh School Board* v. *Renfrew Parish School Board*, 15th November 1877.

Area of a Parish. Sect. 9.

There cannot be an educational parish, partly burghal and partly landward.—*Parish School Board of Selkirk* v. *Burgh School Board of Selkirk*, 5th June 1875.

United Parishes. Sect. 10.

Annexations, whether *quoad omnia* or *quoad sacra*, are parts of the parish to which they are annexed.—*Opinion of Counsel.*

Small Burghs may be united with their Parishes. Sect. 11.

The school board of such united parish has all the rights of a parish and of a burgh school board, and is entitled to the school-buildings and the customary contributions.—*School Board of Peebles* v. *Magistrates of Peebles*, 28th February 1874.

II.—ELECTION OF SCHOOL BOARDS AND MANAGEMENT.

SECTIONS 3, 4, 5, 8, 12-22, 48, 52, 57, 58, 67, 70.

ELECTION OF SCHOOL BOARDS.

Members. Sect. 12.

An inspector of the poor cannot act as a member of a school board, as a manager under Sect. 22, or as an officer under Sect. 70 of the Education Act, 1872.—*Clark* v. *Board of Supervision*, 10th December 1873.

Electors. Sect. 12.

Who are, and who are not, entitled to vote?—*Opinion of Counsel*, March 1873.

Married women are not legally incapable of voting.—*Ramsay* v. *Craig*, July 1876.

Partner is not entitled to vote for company entered on roll.—*Luke* v. *M'Ara*, 31st May 1876.

A trustee for another cannot vote.—*Ramsay* v. *Craig*, July 1876.

The roll must give a reasonably certain description of the voter.—*Dodds* v. *Notman*, 6th June 1876; *Wright* v. *Smeaton*, 9th June 1876.

Trivial and technical errors in the valuation roll are to be disregarded.—*Petition, M'Leish*, 23d April 1873; *Findlay & Stewart* v. *Gemmill*, 25th July 1873; *Hay* v. *Kippen*, 27th March 1876; *Petition, Duncan*, 27th April 1876.

Question as to position of subjects.—*Macintyre* v. *Corbet*, 12th March 1874.

It is illegal for a returning officer to vote.—*Wright* v. *Smeaton*, 9th June 1876.

A school for which a building grant was received is a "State-aided" school, though it receives no annual grant, and is therefore not inspected.—*Findlay & Stewart* v. *Gemmill*, 26th April 1873.

Determination of Questions as to Elections. Sect. 14.

Where a candidate's agents examine papers, and acquiesce in returning officer's decision, that candidate is barred from raising question before sheriff.—*Walker* v. *Mure*, 15th May 1873.

Contra.—*Macintyre* v. *Corbet*, 30th October 1873; *Lowson* v. *Keddie*, 13th April 1876.

It is not necessary that the petitioner should be a resident or a ratepayer.—*Walker* v. *Mure*, 15th May 1873.

The sheriff cannot entertain the question of the validity of an election.—*Forteviot Case*, 29th April 1876.

Contra.—*Wright* v. *Smeaton*, 1st June 1876.

That a voter has been paid the expense of vindicating his right to vote is not a relevant averment of corruption.—*Harvey* v. *Duncan & Paterson*, 11th July 1876.

Electors improperly excluded from voting, may solemnly declare their votes in Court.—*Petition, M'Leish*, 24th June 1873.

Electors improperly allowed to vote, cannot be compelled to declare for whom they voted.—*Macintyre* v. *Corbet*, 28th July 1873.

Contra.—*Ramsay* v. *Craig*, September 1876.

In petitions under Sect. 14, there is an appeal from sheriff-substitute to sheriff-principal.—*Findlay* v. *Gemmill*, 26th April 1873.

Contra.—*Hay* v. *Kippen*, 16th April 1876; *Lowson, &c.* v. *Keddie*, 29th April 1876.

Generally speaking, no expenses will be given in petitions under Sect. 14.—*Macintyre* v. *Corbet*, 28th July 1873; *Harvey* v. *Duncan*, 11th July 1876.

Where returning officer has rendered the election invalid, he will be found liable in expenses.—*Armour* v. *Miller*, 31st May 1873; *Wright* v. *Smeaton*, 9th June 1876; *Dodds* v. *Notman*.

Invalid Elections. Sect. 15.

Whenever the election of a candidate is declared invalid, the school board ought to nominate a member.—*Findlay* v. *Gemmill*, 26th April 1873.

Contra, where the sheriff can take the candidate who received the next highest number of votes to those returned.—*Ronaldson* v. *Brown*, 12th May 1876.

When the sheriff finds an equality of votes between two candidates, only one of whom has been returned, he cannot remit to returning officer, who is *functus officio*, but must intimate to school board.—*Hope* v. *Mackintosh*, 30th May 1873.

The vote of a returning officer invalidates the election.—*Wright* v. *Smeaton*, 9th June 1876.

Duties of School Boards. Sect. 21.

A member of a school board may resign for a reasonable or necessary cause, but not at pleasure: the chairmanship may be resigned.—*Opinion of Counsel.*

The election of a chairman at the first meeting of a school board is matter of direction, but not imperative.—*Opinion of Counsel*, 15th May 1873.

Whether a school board may be properly cited by service upon their clerk?—*Harrison* v. *School Board of Tingwall*, 9th April 1877.

The clerk will not, in the absence of the school board, be ordered to furnish a ratepayer with extracts of the minutes.—*Paterson* v. *Roy & Bennet*, 15th August 1878.

III.—SUPPLY OF SCHOOL ACCOMMODATION.

SECTIONS 23-42.

Parish Schools. Sect. 23.

When, under Sect. 11, a burgh is dealt with as part of a parish, the schools erected and maintained out of the common good, and managed by the magistrates, are, along with the customary contributions, transferred to the parish school board.—*School Board of Peebles* v. *Magistrates of Peebles*, 28th February 1874.

In a parish partly burghal and partly landward, the only parish school was situated within burgh, was chiefly used by residents in burgh, and was managed and maintained by agreement between burgh and heritors: *Held* it was transferred to school board of parish, not of burgh.—*Selkirk Parish School Board* v. *Selkirk Burgh School Board*, 5th June 1875.

What cases fall under the rule and the exception in Sect. 23?—*Do.*

Where the only school in a parish, and the teacher's house, have been rebuilt and maintained by the trustees of a private charitable trust, who also assisted the heritors in appointing and paying the teacher: *Held* that the buildings were transferred under Sect. 23.—*School Board of Caerlaverock* v. *Hutton's Trustees*, 4th February 1876.

A school was built on an entailed estate. The heir in possession appointed the teacher, and named a committee of management among the heritors, who supported the school without assessment. There was no agreement to substitute this school for the discontinued parish school: *Held* that it was not transferred under Sect. 23.—*Stewart* v. *School Board of Little Dunkeld*, 10th July 1877.

A *second* parish school is not transferred under Sect. 23. A written title is not required for such transfer.—*Straiton Case —Opinion of Counsel*, 11th February 1874.

Heritors are not bound to transfer teachers' houses, where these have not been provided, or to continue money equivalents. —*Girthon School Case—Opinion of Counsel*, 20th February 1875.

Circumstances in which a chapel school was not legally constituted a side school.—*Avondale Case—Opinion of Counsel*, October 1875.

The right to demand transfer rests, not on title, but on prior appropriation by right to public uses.—*Holm Case—Opinion of Counsel*, 21st March 1877.

The right of the school board to make surprise visits to the school, for examination of the teaching and scholars, is not so clear that the Court will interdict the teacher from refusing admission.—*School Board of Kelso* v. *Hunter*, 18th December 1874.

Or the school board from entering.—*Marshall* v. *Ardrossan School Board*, 10th July 1876.

The schoolhouse is to be used only for educational purposes. —*Lawson* v. *School Board of Kettle*, June 1878.

Liability of school building to local assessment.—*A.* v. *B.*, April 1878.

Burgh Schools. Sect. 24.

The teacher's house, in burghs as well as in parishes, is transferred to the school board, as well as the class-rooms.—*Whyte* v. *School Board of Haddington*, 9th July 1874.

Supply of School Accommodation. Sects. 27-36.

The Board of Education are entitled to decide not merely the extent of additional accommodation, but the *manner* in which it is to be provided.—*Carluke Case—Opinion of Counsel*, 5th April 1875.

Where circumstances alter, the school board ought to reconsider the question of school accommodation, and submit their resolution to the Board of Education.

The Court will interfere with the Board of Education only where they have gone outwith the statute, or have not applied their minds to the question of school accommodation.—*Lord Advocate* v. *School Board of Stow*, 19th February 1876.

Is it competent for the Board of Education to require the erection of a teacher's house?—*Lord Advocate* v. *School Board of Strathmiglo*, 18th November 1876.

Where Board of Education have made inquiry, it is irrelevant

to allege concealment by the school board in their opinion and determination.—*M'Lean* v. *Kilbrandon and Kilchattan School Board*, 29th November 1877.

Proceedings for providing Schools. Sect. 37.

The Court approved of a lease of a private trust school to the school board, who undertook to give higher education, the trustees reserving power to nominate free scholars.—*M'Culloch* v. *Johnston's Trustees*, 20th July 1876.

A member of a school board is not entitled to feu land to the school board.—*Leith Case—Opinion of Counsel*, December 1873.

Opinion *contra*, if the land-owning member abstain from voting in the matter. The price ought to be fixed by statutory arbitration.—*Opinion of Counsel*, 25th June 1875.

Contracts to supply work or materials entered into between a member of a school board and the school board are voidable at the instance of the school board, but not void.—*Do.*

A school board is not entitled without the sanction of the Board of Education to sell superfluous land acquired, but not required, for a school site. A ratepayer is entitled to interdict such a proposed sale.—*Hart* v. *Auchterarder School Board*, 25th February 1878.

Transference of Schools. Sect. 38.

Stipulations for reversion, pre-emption, or restricted use, must not be inserted in transfers under Sect. 38; but a reasonable servitude for lights or access may be so.

A school board must not accept use of school by tolerance instead of lease.

The continuance of a school—even one built with Government grant—is entirely in the discretion of the managers.—*Free Church Case—Opinion of Counsel*, October 1873.

A school dedicated to special purposes, or necessary for execution of trust, cannot be transferred.—*Shedden's Case, &c.—Opinion of Counsel*, 30th June 1873.

Personal debts of trustees or managers cannot be transferred. —*Do. do.*

Sect. 38 does not authorise the transfer of money.—*Nairn Case—Opinion of Counsel*, September 1874.

A portion of a trust estate may be transferred.—*Mid-Calder Case—Opinion of Counsel*, 20th February 1875.

IV.—FINANCE AND PARLIAMENTARY GRANT.

SECTIONS 43-53, 67, 70, 78.

School Fund. Sect. 43.

The expenses of a complaint under Sect. 60 (1), which was dismissed as unreasonable, may be charged against the school fund.—*Greenlaw Case—Opinion of Counsel*, 1875.

Power to impose School Rates. Sect. 44.

The rate is to be imposed on owners or occupiers so as to make the aggregate amounts recovered from the two classes approximately equal.—*Glasgow Case—Opinion of Counsel*, August 1875.

The parochial board are not entitled to deduct cost of collection.—*Cargill Case—Opinion of Counsel*, June 1874.

Where school board certify a rate per £1, the risk of recovery falls on school board.—*Brechin Case—Opinion of Counsel*, 20th February 1875.

Parish ministers are not liable in school rates.—*Lindsay* v. *Inglis*, 21st May 1874; *M'Laren* v. *Mackenzie*, 9th September 1875; *Frazer* v. *Robb*, 24th December 1875; *Anderson* v. *Smith*, 9th April 1877.

Contra.—*Opinion of Counsel*, 15th May 1873; *Maxwelltown Case*, 2d July 1874; *Parochial Board of Annan* v. *Gourlay*, 2d September 1875.

Is a public school teacher appointed prior to 1872 liable in school rates?—*Sandison* v. *Hunter*, May 1876.

A season-tenant, though not on valuation roll, is liable in school rates.—*Lindsay* v. *Semple*, 21st May 1874.

The trustee on a bankrupt estate is bound to pay poor and school rates in full though he has not taken possession of effects on the bankrupt's premises.—*Hall* v. *M'Caig*, 4th July 1878.

An obligation granted prior to 1872 to relieve of schoolmaster's salary does not apply to school rates.—*Stewart* v. *Earl of Seafield*, 1st March 1876.

Where schoolmaster's salary is excepted from a general obligation to relieve of burdens, granted prior to 1872, the exception applies to school rates.—*Robertson* v. *Miller*, 2d April 1875.

School boards are not bound to inform the ratepayers whether any portion of the rate will be employed in providing religious instruction.—*A.* v. *Marshall*, January 1874.

Power to Borrow. Sect. 45.

School boards are not entitled to borrow for the improvement and furnishing of existing schools; they may borrow for the purchase of additional playground.—*Perth Case—Opinion of Counsel*, 1875.

The word "schoolhouse" in Sect. 45 includes all suitable and customary appurtenances.—*Kirkcudbright Case—Opinion of Counsel*, October 1874.

Are school boards entitled to borrow by overdraft?—*Commercial Bank* v. *School Board of Lady*, October 1878.

Existing Bequests. Sect. 46.

Terms of a trust held by minister and elders, the income of which did not fall under Sect. 46.—*Coldstream Case—Opinion of Counsel*, May 1874.

Terms and history of a trust, part of the income of which was paid to the parish schoolmaster, but was held not to fall under Sect. 46.—*School Board of Caerlaverock* v. *Hutton's Trustees*, 4th February 1876.

Customary contributions for retiring allowances, repairs, and cleaning, as well as for salaries, fall under Sect. 46.—*School Board of Dunbar* v. *Magistrates of Dunbar*, 18th March 1876.

Sect. 46 is not confined to cases where an invariable sum was by custom contributed, or where a sum has been contributed for the prescriptive period, but an average annual expenditure must be taken for a period immediately preceding 1872.—*Perth School Board* v. *Magistrates and Town Council of Perth*, 19th October 1878.

Prior to 1835 a burgh had contributed to the burgh school (besides interest on mortifications, amounting to £19, 3s. 4d.) a variable sum for usher's salary, and £9, 0s. 10d. to the rector, who also got a house worth £25. The burgh also repaired the school building. From 1835 to 1860 the burgh was under trust, and some of these payments were suspended. In 1869 the burgh resolved to pay £100 *per annum* while satisfied with the school. This was paid till 1872. In 1877 the school board converted the school into one for higher class teaching. *Held* the burgh was bound to continue in perpetuity payment of £100 *per annum* (which was held to include the interests of mortifications), and also £27 *per annum* as the average expenditure on repairs for ten years prior to 1872.—*School Board* v. *Magistrates and Town Council of Dunfermline*, 19th October 1878.

Where trust income directed to be disposed of in putting

children to school, and down to 1872 the children had been put to the parish school: *Held* the income did not fall under Sect. 46.

But where income appointed to be paid in addition to schoolmaster's allowance, *held* that this fell under Sect. 46.—*Salton School Board* v. *Burnet's Trustees*, 28th April 1876.

Accountant. Sect. 50.

The accountant of the Board of Education is not a taxing officer.—*Opinion of Counsel*, 20th February 1875.

Treasurer. Sects. 48 and 52.

A member of school board may act as clerk and treasurer, but only gratuitously.—*Paton* v. *School Board of Largs*, 28th February 1874.

School Fees. Sect. 53.

A teacher appointed before 1872 may be required by the school board to collect fees.—*Buchanan* v. *School Board of Tulliallan*, 11th June 1875; *Livingstone* v. *School Board of New Byth*, 18th June 1877.

Contra.—*Blair* v. *School Board of Dingwall*, 7th June 1874; *Macintyre* v. *School Board of Kincardine*, 26th February 1875.

May he also be required to keep a register and accounts of fees, and to collect heating charges?—*Buchanan* v. *School Board of Tulliallan.*

Where fees not payable in advance, payments should be proportioned to the number of attendances. The teacher is not entitled to fix rate of fees or regulate terms of admission.—*Selkirk Parish School Board* v. *M'Dougall*, 8th March 1877.

Poverty and deficiency of school accommodation are not relevant defences to an action against a parent for fees.—*School Board of Kirknewton* v. *Arbuckle*, May 1875.

A school board may make fees payable quarterly in advance. *Laurencekirk Case*, January 1875; *Kilbirnie Case—Opinion of Counsel*, 20th February 1875.

A school board may add to fees a charge for heating, which was in use prior to the Act of 1872.—*Logierait Case*, 25th April 1874.

V.—TEACHERS.

SECTIONS 54-61, 76, 77, 78.

Teachers' Houses. Sect. 54.

Where the house of an "old teacher" is destroyed, the school board is not bound to rebuild, but may pay a money equivalent. —*Marshall* v. *School Board of Ardrossan*, 17th March 1877.

The school board are not bound to remove structural defects; and they are sole judges of the manner and extent of repairs.—*Clark* v. *School Board of Strichen*, April 1877.

Circumstances in which *held* the school board had no right of passage through "old teacher's" garden.—*School Board of Ardersier* v. *Gray*, 30th July 1877.

An "old teacher" is not bound, at least without compensation, to remove erections which he has lawfully made in his garden.—*School Board of Latheron* v. *Mackay*, 28th July 1877.

Teachers in Office. Sect. 55.

School boards are not entitled, by the appointment of a rector, to interfere with the social status and prospective emoluments of the classical teacher in a higher class school. *Elgin Case—Opinion of Counsel*, 16th September 1873.

School boards are entitled to alter the subjects taught, and to reduce the rate of fees, subject to the teacher's claim of compensation under Sect. 55.—*Hunter* v. *School Board of Kelso*, 5th March 1875.

Sect. 55 reserves the interest of the teacher in the school fees, which are "specially appropriated" in the sense of Sect. 43.—*Buchanan* v. *School Board of Tulliallan*, 11th June 1875.

Where the teacher, formerly paid by fees, had voluntarily employed an assistant, and the school board had enlarged the school and the staff of teachers, *held* that the teacher was secured in the sum paid by him to an assistant; and that, in present circumstances, he was still entitled to the whole fees received; but the Court will not define the *future* rights of teachers under Sect. 55.—*Fraser* v. *School Board of Carluke*, 14th June 1877.

A teacher formerly paid by fees is not secured in the amount of fees received in the year when the Act passed, but in the amount of fees actually received in future years.—*Blair* v. *School Board of Dingwall*, 31st August 1874.

Where school fees are reduced at once by one-half, the teacher is entitled to compensation.—*Alexander* v. *School Board of Lochgilphead*, 11th September 1874.

A teacher who undertakes to collect fees is bound, when re-

quired by school board, to furnish monthly statements of arrears. —*School Board of Forgue* v. *Lippe*, 7th December 1875.

The appointment of an assistant by a school board does not diminish the right of the teacher to the amount of the fees.—*Jamieson* v. *School Board of Gargunnock*, 22d April 1876.

An old teacher has no right to appoint an assistant or substitute.—*Tulliallan School Board* v. *Buchanan & Bryce*, September 1874; *Dervaig Case—Opinion of Counsel*, 18th January 1875.

New Teachers. Sect. 55.

In appointing a servant who is not a teacher, the school board are bound to specify the duration of service.—*Muir* v. *School Board of Ardrossan*, November 1875.

Where a school board resolved to fix the teacher's salary at £125 *per annum: Held* this was a binding contract for one year.—*Macfarlane* v. *School Board of Mochrum*, 27th May 1875.

A teacher appointed under Sect. 55 is entitled to three months' notice of dismissal, or to compensation.—*Morrison* v. *School Board of Abernethy*, 3d July 1876.

Female teachers appointed under Act of 1861 are entitled to notice of dismissal.—*Stirling Case—Opinion of Counsel*, April 22, 1876.

Where a teacher, entitled to Parliamentary grant, leaves between quarters, he is entitled to a proportion of the grant corresponding to the gross attendances.—*Wilson* v. *School Board of Straiton*, 27th March 1877.

Where a teacher occupies his house as a yearly tenant, he is entitled to the franchise as tenant and occupant.—*M'Gregor* v. *Caldwell*, 22d October 1873.

A teacher appointed during the pleasure of the board, with the use of a house, is not entitled to the franchise.—*Kilgour*, November 5, 1877; *Munro*, October 2, 1877.

A teacher appointed under the Act of 1872, Sect. 55, with the use of a house and garden worth £5 a-year, is entitled, in virtue of Sect. 24 of the Education Act, 1878, to be enrolled as liferent proprietor.—*Murray* v. *Morton*, Nov. 9, 1878.

Procedure under Sect. 60 (1).

The sentence of the sheriff is not subject to review, except on the ground of some fundamental nullity.—*Macintyre* v. *School Board of Kincardine*, 23d February 1874.

Procedure under Sect. 60 (2).

Averments on which the Court refused to interfere with the removal of a teacher as "unfit and inefficient."—*Whyte* v. *School Board of Haddington*, 9th July 1874; *Robb* v. *School Board of Logiealmond*, 5th February 1875.

A claim for retiring allowance by the teacher of a side school is not excluded by the facts that he was not examined by the Presbytery, did not sign the Confession of Faith, and did not contribute to the Schoolmasters' Widows' Fund.—*Robb* v. *School Board of Logiealmond.*

The right to a retiring allowance, conferred by the Schoolmasters Act, 1861, Sect. 19, is extended by Sect. 60 (2) to every case of dismissal without fault.—*Robb* v. *School Board of Logiealmond.*

The Court will not review the decision of the school board and Board of Education on the question of "fault."—*Morison* v. *School Board of Glenshiel*, 28th May 1875.

School boards are not bound to pass a resolution requiring a report, but the report must state whether the teacher is efficient or not. Allegations of malice are irrelevant against a school board acting under the statute. Are allegations of oppression also irrelevant?—*Macfarlane* v. *School Board of Mochrum*, 9th November 1875.

Averments which were *held* not to disclose a case of oppression against a school board. *Opinion* that averments of oppression are irrelevant. Objections to Inspector's Report.—*Marshall* v. *Ardrossan School Board and Board of Education*, Dec. 6, 1877.

Deliberate contumacy does not constitute a ground of removal under Sect. 60 (2).—*St Fergus Case—Opinion of Counsel*, December 1875.

A resolution of dismissal need not specify fault or decide the question of retiring allowance. A school board may enforce a resolution of dismissal although they have, subsequently to its date, negotiated with the teacher for his resignation.—*Aberdalgie School Board* v. *Doig*, 29th Nov. 1877.

VI.—HIGHER CLASS SCHOOLS.

SECTIONS 62-64.

Retiring allowances may be paid out of the school fund to the teachers of higher class schools.—*Glasgow Case—Opinion of Counsel.*

A school board may lawfully convert into a preparatory department part of a higher class school.—*Aberdeen Case—Opinion of Counsel*, 3d July 1875.

The expense of alterations and repairs cannot be charged on the school fund.—*Edinburgh Case—Opinion of Counsel*, March 1874.

VII.—MISCELLANEOUS PROVISIONS.

SECTIONS 65–80.

Compulsory Attendance. Sect. 69.

The parochial board are the sole judges whether a parent is unable by poverty to pay fees.—*Callachan* v. *Paterson*, September 1876; *Glasgow Case*, July 1874.

Prosecutions. Sect. 70.

Is inability to pay fees a sufficient defence to prosecution under Sect. 70?—*Glasgow Case*, July 1874, and *Macpherson* v. *Fowler*, Feb. 1878.

Failure to send young children three or three and a half miles to school is not gross neglect.—*Campbell* v. *Jameson*, 23d February 1877; *North Yell Case*, April 1876.

A written certificate by school board is indispensable in every prosecution under Sect. 70.—*France* v. *Procurator-Fiscal of Inverness*, 29th June 1877.

In a prosecution under Sect. 70, the child may be examined in Court.—*Cargill Case*, 21st June 1875; *Mochrum Case*, 1st June 1875.

Or a remit made to a teacher.—*Jameson* v. *Cameron*, 15th December 1876.

Or the sheriff may examine the private school at which the child attends.—*Kirkcudbright Case*, July 1877.

Home teaching will not generally be accepted as sufficient.—*Edzell Case*, May 1874.

After child is brought to school, teacher becomes responsible for education.— *Cuthill Case*, 14th December 1876.

The teacher is not entitled to stipulate that the children shall act as monitors.—*Bowden Case*, May 1875.

The attendance of half-timers is a sufficient defence to a prosecution under Sect. 70.—*Selkirk Case*, 11th May 1875.

The Coal Mines Regulation Act, 1872, permitting the employment of children of school age, affords no defence to a prosecution under Sect. 70.—*Procurator-Fiscal of Ayrshire* v. *Reid*, Feb. 1878.

That the school board have failed to supply school accommodation is no defence to a prosecution under Sect. 70.—*Campbell* v. *Jameson*, 15th December 1876.

Is a parent entitled to insist that his children shall be taught at the public (late parish) school, and not at a female school?—*Forglen Case*, 26th January 1878.

Procedure. Sect. 71.

The evidence of the parent ought to be taken in such prosecutions.—*Opinion of Lord Young—France* v. *Do.*

Whether, in certain circumstances, gross neglect has been committed, may be stated as a question of law under the Summary Prosecution Appeals Act, 1875.—*Campbell* v. *Jameson*, 23d February 1877.

Both practice and opinion are divided on the question whether Procurator-fiscals are entitled to charge fees for prosecutions under Sect. 70.

Schedule B. General Rules.

A writer, employed as returning officer, is entitled to make professional charges.—*Downie* v. *School Board of Annan*, 18th November 1873.

Article 25 of the General Order, 31st January 1876, and Circular, 3d March 1876, are *ultra vires* of the Department, and do not exclude actions by returning officers for fees.—*Dodds* v. *School Board of Bathgate*, 24th March 1877.

Rules for Elections in Parishes and Districts.

Circumstances in which a nomination paper was held to be timeously received.—*Armour* v. *Miller*, 31st May 1873.

A harmless error in the time of publishing notice of candidates will not invalidate an election.—*Petition, M'Gilvray*, 13th May 1873.

Although a candidate cannot withdraw within seven days of the election, he may publish a notice that he does not wish to be elected.—*Fordoun Case*, 1876.

When candidates have improperly withdrawn, the returning officer is not entitled, without a poll, to declare the remaining candidates elected.—*Cattley* v. *Ross*, 28th April 1873—*Opinion of Counsel.*

Rules for taking Votes by Ballot in Parishes and Districts.

Question as to screening voter from observation.—*Fraser* v. *Hislop*, 20th June 1876.

It is illegal for a candidate to act as a presiding officer.—*Ronaldson* v. *Brown*, 12th May 1876.

A voter who has not taken the declaration of secrecy, must not be admitted to the counting of the votes.—*Morrison* v. *Stephenson*, 29th April 1876.

A returning officer may use as a private mark a consecutive

number on the ballot papers.—*Walker* v. *Mure & Saunders*, 15th May 1873.

He may also mark the consecutive numbers on counterfoils to the ballot papers.—*Fraser* v. *Hislop*, 20th June 1876.

The voter may mark the ballot paper with Roman numerals, but not with the written names of figures.—*Petition, Lawrie*, 13th April 1873; *Corbet* v. *Macintyre*.

The voter may use both figures and crosses.—*Hope* v. *Macintosh*, 30th May 1873.

The presiding officer may take a declaration of identity.—*Hay* v. *Kippen*, March 27, 1876.

The fact of identification by a mark may be proved by an objector to a marked paper.—*Petition, Cecil*, 1st April 1876.

Obviously accidental marks do not render voters invalid.—*Lowson* v. *Keddie*, 13th April 1876; *Troup* v. *Walker*, 9th May 1876.

Assistance may be given to blind or illiterate voters.—*Wright* v. *Smeaton*, 9th June 1876; *Fraser* v. *Hislop*, 20th June 1876.

Rules for Election in Burghs.

If a ballot paper is marked with a straight line instead of a cross, or on the left-hand side of the candidate's name, or with any substantial mark unconnected with the voting mark, the vote is bad.—*Haswell* v. *Stewart*, 23d May 1874; *Robertson* v. *Adamson*, 5th July 1876.

If the voter writes the candidate's name, the vote is bad.—*Woodward* v. *Sarsons*, 9th July 1875.

DECISIONS.

I.—CONSTITUTION OF SCHOOL DISTRICTS.

Sections 1, 8, 9, 10, 11, 17.

Disputes as to Area. Sect. 9.

The power of determination conferred by Sect. 9 upon the Board of Education is not confined to the case of a parish in which there is a burgh or a part of a burgh.

The Board must decide, not arbitrarily, but according to the facts and the law of each case.

Their determination is final, but they must hear all parties.

They ought to send legal questions to the sheriff.

Lochgilphead School Board *v.* S. Knapdale School Board. Jan. 30, 1877. First Division.

The school board of a *quoad sacra* parish applied, in terms of Sect. 9, to the Board of Education to settle whether, under the decreet of disjunction and erection, certain lands were within the area of the *quoad sacra* parish, or of a civil parish from which part of the *quoad sacra* parish had been disjoined. Before the school board for that civil parish was elected, the Board of Education determined that the lands were within the area of the *quoad sacra* parish. On a special case, presented by the two school boards to the First Division of the Court, it was argued that the power of determination conferred on the Board of Education by Sect. 9 was limited by the first portion of the section to parishes in which there was a burgh, or part of a burgh; or, if it applied to all parishes, it was limited to the mere settlement of boundaries; that the determination was not valid, as no opportunity of appearing had been given to the civil parish; that the determination was wrong on the merits. The Court held—(1) that they could not review the determination on the merits; (2) that the power conferred by Sect. 9 extended to all parishes and burghs; but (3) that the determination was bad, as no opportunity of appearing was given to the civil parish. Lord President (Inglis) suggested that it was the intention of Sect. 9 that when legal questions like this arose, they should be sent by the Board of Education to the sheriff. His

lordship added: "It may be doubted whether it does not appear "on the face of this deliverance that the Board of Education failed "to apply their minds to the true question before them—viz., "whether, according to the just construction of the decree of dis- "junction and erection, the farms belonged to the one parish or "the other, and proceeded to a division on some view of expedi- "ency or *mero arbitrio*." Lord Deas observed that it was the duty of the Board of Education to apply their minds to the terms of the decreet, to hear parties concerned, and to consider whether they would send it to the sheriff. They had no arbitrary power to take from one parish and add to another. [It is understood that the determination of the Board of Education was given in accordance with the decreet of disjunction, and with the fact that the children from the disputed area were in use to attend school in the *quoad sacra* parish, that school being the most convenient.]

Where the municipal and parliamentary boundaries have been adopted under Sect. 9, and a police assessment is afterwards levied for the first time, the school board desiring an alteration of area must apply to the Board of Education.

Renfrew Burgh School Board *v.* Renfrew Parish School Board. Nov. 15, 1877. Second Division.

In 1873, the Board of Education, in terms of Sect. 9, fixed the area of the burgh of Renfrew to be the parliamentary and municipal boundaries of the same, there being then no police assessment in the burgh, and indeed no municipal assessment, except a small rate levied within the parliamentary boundaries for the expenses of making up a roll for municipal elections, under 31 & 32 Vict. cap. 108. The elections of 1873 and 1876, and the collection of the school rate for the burgh school board, were accordingly confined to the area of the parliamentary boundaries. Before the elections of 1876, however, the magistrates and town council of the burgh obtained from the sheriff, under a Local Police Act, a decree defining the area of the ancient royalty of the burgh as the area of chargeability for police assessments; and in April 1876 they imposed a small police assessment. The district included in the ancient royalty (the limits of which had not been previously ascertained), but beyond the parliamentary boundaries, yielded a rental of £7000; and many children came from this district to the burgh public schools. In an action raised in 1877 for declarator that the area of the burgh for educational purposes extended to the ancient royalty, or boundaries of police assessment, and for reduction of the minute of the Board of Education obtained in 1873, of which both landward and burgh authorities had full notice, it was held by the Second Division, confirming the judgment of Lord Young, that if the burgh school board had any relevant case for an alteration of area, they must, in the first place, apply to the Board of Education, whose determination on such matters is final.

[Cf. Education (Scotland) Act, 1878, Sect. 30.]

United Parishes. Sect. 10.

Annexations, whether *quoad omnia* or *quoad sacra*, are parts of the parish to which they are annexed.

"I am of opinion that, where a part of a parish has been annexed to another parish *quoad omnia*, the part so annexed must be considered to be a part of the parish to which it is annexed. This result would follow independently of Sect. 10. There is more difficulty in the case of an annexation *quoad sacra;* but I am of opinion, with hesitation, that where a part of a parish has been annexed *quoad sacra* to another parish, it must be considered to be part of the parish to which it is annexed. It seems to have been the policy of the Legislature to give to unions *quoad sacra* the same effect as to unions *quoad omnia;* so that, where parts of two parishes are united *quoad sacra*, they are deemed one parish. I think the 10th section may be fairly construed to include the case of the union of a part of a parish with another." Friockheim Case. Opinion of Solicitor-General Rutherfurd Clark.

II.—ELECTION OF SCHOOL BOARDS AND MANAGEMENT.

SECTIONS 3, 4, 5, 8, 12-22, 48, 52, 57, 58, 67, 70.

ELECTION OF SCHOOL BOARDS.

Members. Sect. 12.

An inspector of the poor cannot act as a member of the school board, as a manager under Sect. 22, or as an officer under Sect. 70 of the Education Act, 1872.

This was an application by an inspector of the poor, who had been elected member of a school board, for interdict against the Board of Supervision dismissing him from his office in virtue of the powers conferred by Sect. 56 of 8 & 9 Vict. cap. 83, The Poor-Law Amendment Act. The Board of Supervision had announced by general minute that it was in their opinion inexpedient that inspectors should act under the Education Act in any of the ways specified, such union of office being incompatible with the due and independent discharge of the duties of inspectorship. They now pleaded that it had been their practice from 1845 to prohibit inspectors from holding offices the duties of which it seemed likely would conflict with those of inspectorship, as in the case of procurator-fiscal, governor of poorhouse, ground-officer on local estate, &c. It was held by the Second Division, affirming the judgment of Lord Shand, that the Board of Supervision having formed an opinion on the subject in accordance with their usual practice, this was final, and the Court could not review it on the merits. Clark v. Board of Supervision. Dec. 10, 1873. Second Division.

Electors.

Who are, and who are not, entitled to vote?

Edinburgh Case. March 1873. Opinion of Solicitor-General Rutherfurd Clark.

The following classes of persons are entitled to vote in elections of school boards, if their names be entered in the valuation roll: (1) Joint owners and joint occupants [where the value is sufficient for all], though the interest of each is not entered, the interests being presumed equal; (2) Spinsters whose Christian names are not entered, the question being one of identity; (3) Husbands, entered as joint owners or joint occupants along with wives, if the annual value be not less that £8; (4) Persons having the requisite qualifications, though made up from several subjects separately entered. The following are *not* entitled to vote: (1) Corporations and joint-stock companies; (2) Mercantile and other firms; (3) Trustees, tutors, curators, judicial factors, and agents or factors, as such; (4) Tenants not being occupants; (5) Lodgers; (6) Undischarged bankrupts; (7) Persons entered as owners [or occupants] in right of their wives; (8) Married women, entered as owners or occupants, because they are under the curatory of their husbands.

Married women are not legally incapable of voting.

Lochwinnoch Case. July 1876. Sheriff of Renfrew.

In *Ramsay* v. *Craig*, Sheriff-Substitute Cowan said: "As to the "votes tendered of married women, the general principles of law "and the opinions of our institutional writers are against married "women having a right to vote. They are under the curatory of "their husbands, their persons sunk in his; and being under his "coverture during the subsistence of the marriage, they cannot "exercise legal rights otherwise competent to them. Instances "have occurred of their acting as members of a school board: but "that is an office of public trust to which, by the voice of the "public and with the consent of their husbands, they have been "called; and married women obtaining such consent, expressly "or tacitly, have always been sustained in the office of trustee." On appeal, Sheriff Fraser reversed this judgment, holding that married women entered as owners are not subject to any legal incapacity to vote. The learned Sheriff points out that the exclusion of women from the parliamentary franchise was based on consuetudinary law; whereas under the Education Act women have been allowed by universal consent to vote in school-board elections and to be elected members of school boards. The numerous disabilities which the law puts on married women with reference to property, &c., do not imply that such women cannot exercise a public function, as voting under or administering the Education Act. A married woman is not under curatory in the sense in which a minor is. She may act as a testamentary trustee, a factor *loco tutoris*, or as the commissioner, agent, or factor of her husband. [In *R.* v. *Harrald*, L. R. 7 Q. B. 361, it was held that Sect. 9 of 32 & 33 Vict. c. 55, which confers the municipal fran-

chise on women, does not apply to married women, who are "in- "capable of exercising almost all public functions."]

A partner is not entitled to vote for company entered on roll.

In *Luke* v. *M'Ara*, Sheriff Monro held that the returning officer had properly declined to receive the vote of a person who claimed to vote as the representative of a mercantile firm—"John Luke "& Son." The name of a company, not of an individual, was entered, and it made no difference that it was stated there was only one partner. Fossaway Case. May 31, 1876. Sheriff of Clackmannan.

A trustee for another cannot vote.

In *Ramsay* v. *Craig*, Sheriffs Cowan and Fraser held that it was a relevant objection to a vote that it had been given by a trustee for another. In the same case, Sheriff-Substitute Cowan observed: "The second and third pleas for the respond- "ent maintain that the electoral roll prepared by the returning "officer is conclusive as to the right of all persons therein "named to vote. It is, however, a roll prepared without any "machinery for proper revision—certainly without any provision "for parties being heard either as to the placing thereon or dis- "placing therefrom the names of individuals. It is liable to "many errors, and must necessarily include many names open to "objection. It is in the position of being a tentative roll—no "doubt as accurate as the returning officer can make it—useful "as a means of taking the vote, but having no independent au- "thority of its own. The question whether a particular voter is "entitled to vote, must be determined not by it, but by Rule 2 of "Schedule B. of the Education Act." Lochwinnoch Case. July 1876. Sheriff of Renfrew.

The Roll must give a reasonably certain description of the voter.

In *Dodds* v. *Notman*, it was held by Sheriff-Substitute Shirreff that the presiding officer had properly declined to receive the vote of Helen Waugh, who stated herself to be one of the "Misses "Waugh" entered in the roll as tenants and occupants of a subject at a rent of £45. The roll did not show how many "Misses "Waugh" there were, nor what were their Christian names. The Sheriff-Substitute observed, that while mistakes or omissions in name and designation might be corrected, the entry must show that a certain person does, or that certain persons do, possess the qualification. On appeal, this judgment was affirmed by Sheriff Davidson, who observed that the presiding officer, "not being "able to proceed on his own private knowledge, could not dispose "of such a claim made by either a real or a false Miss Waugh "without evidence which, for excellent reasons, he was not entitled "to take. It was not a case of identity at all. There was no "'Helen Waugh' on the roll as to whose identity a question "could arise. Dunbar (Landward) Case. June 6, 1876. Sheriff of Haddington.

Tulliallan Case. June 9, 1876. Sheriff-Substitute of Perth.

In *Wright* v. *Smeaton*, it was held by Sheriff-Substitute Grahame that the presiding officer had properly refused to receive the vote of John Gibb, who claimed to vote in respect of an entry "Mrs "John Gibb," and had improperly received the vote of Mrs Catherine Kinloch, entered as a widow, who stated that her husband had left her eighteen years ago, but who was objected to as a married woman. [The decisions of the sheriffs on this subject seem in some cases to assume that the presiding officer may draw on his own knowledge of places and persons, and may also put questions to the intending voters; in other cases, that the decision must be given according to the valuation roll.]

Trivial and technical errors in the valuation roll are to be disregarded.

Methven Case. April 23, 1873. Sheriff-Substitute of Perth.

In *Petition M'Leish*, Sheriff-Substitute Barclay held that the returning officer had improperly declined to receive the votes of a spinster entered as "Mrs ," and of a person whose name and address were properly entered, but who was inaccurately designed as a tobacconist. The returning officer, who knew both electors to be the persons entered, offered to give them voting-papers if they would acknowledge or adopt the erroneous entry, which they refused to do. The Sheriff-Substitute observed that "the principle is in favour of the utmost freedom to enjoy the "franchise, should there exist evidence of identity." Personation would be punished criminally, and such trivial and technical errors as those above mentioned must inevitably occur in the valuation roll of a large county, however diligent and accurate the assessor might be.

Houston and Killallan Case. July 25, 1873. Sheriff-Substitute of Renfrew.

In *Findlay & Stewart* v. *Gemmill*, Sheriff-Substitute Cowan held that the returning officer had properly received the votes of persons whose Christian names were inaccurately entered in the valuation roll, but who were otherwise identified.

Abernethy Case. March 27, 1876. Sheriff-Substitute of Perth.

In *Hay* v. *Kippen*, Sheriff-Substitute Barclay held that the returning officer had improperly declined to receive the vote of a person whose Christian name (James instead of John) and the rental of whose property (£5, 5s. instead of £4, 15s.) were inaccurately entered. The Sheriff observes that no other person of the name of Davidson was entered as a "tenant or occupier in "Aberargie Village," and no other person of the name of James or John Davidson claimed a vote at the poll, and it was not said that a person named James Davidson was entitled to vote in respect of this qualification.

Meldrum Case. April 27, 1876.

In *Duncan* v. *A. B.*, Sheriff-Substitute Dove Wilson held that the returning officer had improperly declined to receive the vote of a person whose Christian name was inaccurately entered. The Sheriff-

Substitute observed: "Although the petitioner's Christian name "is erroneously entered in the valuation roll as 'James,' the other "portions of the entry in the roll are accurate, and sufficient to "identify the petitioner without doubt or room for confusion. It "appeared that he is the only person of the name of Duncan who "carries on the business of a saddler in the parish, or who is in "the occupation of the premises in question. He has also paid all "the rates and taxes levied upon them. These circumstances were "all within the knowledge of the returning officer; and although "I am not surprised at his feeling himself in some difficulty, he "ought to have allowed the petitioner to record his vote when it "was tendered. It was impossible to expect that the valuation "roll, which is the voting roll under the Education Act, is to be "precisely accurate in every one of the innumerable particulars it "gives; and unless the Act made it unavoidable to insist on strict "accuracy, it would be unfair to make a mere clerical error the "cause of a ratepayer losing his vote. The error fell to be dis-"regarded if there were enough otherwise in the entry to show "clearly who was meant—the object always being to carry out the "intention of the Legislature, that everybody who is a ratepayer "on the proper value, and who is subjected to the duties of one, "should have the corresponding rights." Sheriff-Substitute of Aberdeen.

Question as to position of subjects.

In *Macintyre* v. *Corbet*, where it was alleged that the lands or heritages in respect of which the occupant had been allowed to vote were situated, not within the *quoad sacra* parish in and for which the election was held, but within the original parish, Sheriff-Substitute (Barclay) held that the allegation was not proved, the exact boundary of the *quoad sacra* parish being apparently doubtful. Kinloch-Rannoch Case. March 12, 1874. Sheriff-Substitute of Perth.

A school for which a building grant was received is a "State-"aided" school, though it receives no annual grant, and therefore is not inspected.

In *Findlay & Stewart* v. *Gemmill*, it was held by Sheriff-Substitute Cowan that a school for which in 1839 a Government building grant of £375 had been received was not a "State-aided" school, in respect it was not "under Government inspection." This was reversed by Sheriff Fraser, who held that, though it had no annual grant, the school was State-aided. It was entered in the Report by the Committee of Council on Education as one of the schools "aided by parliamentary grant;" and in the construction of the word "State-aid," it was quite legitimate to refer to official documents laid before Parliament in reference to education. Houston and Killallan Case. April 26, 1873. Sheriff of Renfrew.

Determination of Questions as to Elections. Sect. 14.

Where a candidate's agents examine papers, and acquiesce in returning officer's decision, is that candidate barred raising question before sheriff?

Lerwick Case. May 15, 1873. Sheriff of Orkney and Shetland.

In *Walker* v. *Mure*, it was held by Sheriff Thoms that where the agents of a candidate had examined the ballot papers alleged to be doubtful, and acquiesced in the decision of the returning officer regarding them, the candidate was not entitled afterwards to challenge these ballot papers, on the grounds decided by the returning officer.

Contra.

Kinloch-Rannoch Case. Sheriff of Perth.

In *Macintyre* v. *Corbet*, where A, a candidate, had been present at the poll, and had not objected to the admission of B to vote, nor to the return made at the declaration of the poll, and had not challenged any votes when his (A's) election was challenged by petition, on which he was unseated, it was held by Sheriff-Substitute Barclay that A was barred by personal exception from objecting to B's vote, that B was not resident within the district. On appeal, this judgment was reversed by Sheriff Tait, who held that the fact of A being present when the vote was recorded did not exclude him from now objecting that the voter was not qualified.

Kettle Case. April 13, 1876. Sheriff-Substitute of Fife.

In *Lowson, &c.*, v. *Keildie, &c.*, where a paper apparently containing more than the proper number of crosses had been submitted by the returning officer to the candidates, Sheriff-Substitute Beatson Bell said he did not think it conclusive that the candidates had not objected at the time. [This plea of acquiescence was also considered and repelled by Sheriff-Substitute Cowan in the Lochwinnoch case.]

It is not necessary that the petitioner should be a resident or a ratepayer.

Lerwick Case. May 15, 1873. Sheriff of Orkney and Shetland.

In *Walker* v. *Mure*, it was objected to a petition to have the election declared invalid, that the petitioner, although an unsuccessful candidate properly nominated, was neither a resident nor a ratepayer in the district, and was therefore not a person having a legal title and interest in terms of Sect. 14. The objection was repelled by Sheriff Thoms.

The sheriff cannot entertain the question of the validity of an election.

Forteviot Case. April 29, 1876.

In this case it was held by Sheriff-Substitute Barclay that where objections were stated, not to particular votes, but to the validity of the whole election, so that if the objections were sustained a

new election would be necessary, the sheriff has no jurisdiction under Sects. 14 and 15 of the Act. The Sheriff-Substitute observes that if the returning officer admits a bad vote or rejects a good one, the sheriff can rectify this, and may displace one or more persons returned and place others in their room. Or, where this cannot be done, he may find and declare one or more persons disqualified; and the board, if a quorum remains, can supply the void, or, if there be not a quorum remaining, the Scotch Education Department can perform the duty so as to complete the board. But he had searched the statute in vain for power to reduce an election, to appoint a new one, and to name a returning officer. The Court of Session might exercise its *nobile officium*, as in municipal elections, or the Education Department might have some such power under Sect. 13. [A similar judgment was pronounced by Sheriff-Substitute Sir George Home in the Craignish case, 19th August 1876.]

Sheriff-Substitute of Perth.

Contra.

In *Wright* v. *Smeaton*, it was held by Sheriff-Substitute Grahame that the power given by Sect. 14 to deal with questions in reference to the election of individual members of the board necessarily implied a power to deal with the validity of the whole election.

Tulliallan Case. June 1, 1876. Sheriff-Substitute of Perth.

That a voter has been paid the expense of vindicating his right to vote is not a relevant averment of corruption.

In *Harvey* v. *Duncan & Paterson*, after Sheriff-Substitute Dove Wilson had remitted to the returning officer to take Duncan's vote, which resulted in the election of Paterson and the unseating of Harvey, Harvey brought this action for declarator that Duncan's vote was corrupt, inasmuch as he had been pressed and seduced to vote for Paterson, and had been paid the expenses of the proceeding in which he vindicated his right to vote, on the understanding that he would vote for Paterson, for whom he would not have voted if his expenses had not been paid, and thus had not voted, as he declared he would vote, as he would have done on the day of election. It was held by Sheriff-Substitute Dove Wilson that this did not amount to a relevant averment of corruption. The Sheriff observed that it would be well if in future the regulations for election provided for tendered votes being taken and sealed up. But Duncan was entitled to change his mind about his vote, knowing, as he now knew, the state of the poll; and it was lawful to canvass for his vote. Where a voter took something to his personal advantage and then voted, there would be a presumption that the vote was unduly influenced. Here the voter got no personal benefit; and though his vote would have been bad had he changed it *because* his expenses were paid, it was not relevant to say that his vote was bad because he changed his

Meldrum Case. July 11, 1876. Sheriff-Substitute of Kincardine.

mind *and* his expenses were paid. It was merely a subscription among sympathising friends to pay the expenses to which Duncan had been put in the exercise of the franchise. [As to treating at a school board election, cf. an English case, Turnbull *v.* Justices of Tynemouth, 24 L. J. (N.S.), 731.]

Electors improperly excluded from voting, may solemnly declare their votes in Court.

Methven Case. June 24, 1873. Sheriff-Substitute of Perth.

In *Petition M'Leish*, where it was found that two electors had been improperly excluded from voting, the returning officer declined to attend in the Sheriff Court for the purpose of taking their votes by ballot, on the ground that, having made a return of the poll, he was *functus officio*. Sheriff-Substitute Barclay observed that the returning officer was not *functus* until he had made a *valid* return; but as the returning officer could not be compelled to act, he allowed the electors to make in Court a solemn declaration for what candidates they would have voted on the day of election had they been admitted to vote. This was done; and the Sheriff-Substitute, in consequence of these votes, amended the return of the returning officer.

Electors improperly allowed to vote, cannot be compelled to declare for whom they voted.

Kinloch-Rannoch Case. July 28, 1873. Sheriff-Substitute of Perth.

In *Macintyre* v. *Corbet*, where the vote of an elector was objected to on the ground that he was not resident in the parish, and had been improperly admitted to vote, it was observed by Sheriff-Substitute Barclay that, assuming the objection to be good, the voter could not be compelled to declare for whom he had voted, and it was doubtful whether a voluntary declaration could be received. Possibly the returning officer might be entitled to mark the voting paper of a person whose vote was objected to at the time, so that it might be identified afterwards.

Contra.

Lochwinnoch Case. Sept. 1876. Sheriff of Renfrew.

In *Ramsay* v. *Craig*, Sheriff Fraser, in repelling an objection to votes said to have been given by married women, observed that if a different conclusion had been arrived at, he would have had little difficulty that inquiry must be made as to how the married women voted. The ballot was intended only to protect those who had a legal title to vote, not those who through the error of the presiding officer were allowed to put a voting paper into the ballot-box. The rules for elections in parishes being different from those in burghs, the only way of tracing a vote was to allow a proof, which in most cases must be confined to the oath of the voter. The act of the returning officer in taking the vote was not final, but was subject to appeal, just as any other question relating to the validity of the election. [A similar decision was arrived

at in *Wright* v. *Smeaton* (1st June 1876) by Sheriff-Substitute Grahame, who observed that Sect. 14 applied to both parochial and burgh school-board elections; and presumably the powers of the sheriff were the same in both cases.]

In petitions under Sect. 14, there is an appeal from sheriff-substitute to sheriff-principal.

In *Findlay & Stewart* v. *Gemmill*, a petition to amend a return in respect one of the successful candidates was ineligible, it was held by Sheriff Fraser that there was at common law an appeal from sheriff-substitute to sheriff in all civil matters—unless, from the nature of the case, or from the special mode of procedure prescribed, an appeal was intended to be excluded—and that such appeal was not intended to be excluded by Sect. 14 of the statute. As to the cause being "summary," that was simply an injunction to give a speedy hearing, and that the ordinary roll of process should be dispensed with. [This judgment was specially concurred in by Sheriff Monro in the Whitburn case, 12th May 1876.] Houstoun and Killallan Case. April 26, 1873. Sheriff of Renfrew.

Contra.

In *Hay* v. *Kippen*, a petition to amend a return in respect of improper refusal to receive a vote, it was held by Sheriff Adam that an appeal from sheriff-substitute to sheriff-principal is incompetent. His lordship observed that Sect. 14 of the statute does not contemplate a regular process in the Sheriff Court, with closed record and appeals at different stages, and consequent delays. Something much more summary than ordinary summary process is intended. If a dispute regarding an election shall arise, it is to be determined as quickly as may be by either the sheriff or the sheriff-substitute, and his determination is declared to be final, so that there may be at once an end of the matter. [In the Forteviot case, 16th May 1876, Sheriff Adam adhered to this decision, although the case was one which Sheriff-Substitute Barclay had declined to entertain.] Abernethy Case. April 14, 1876. Sheriff of Perth.

In *Lowson, &c.*, v. *Keddie*, a petition to amend a return in respect of the improper reception of a vote, it was held by Sheriff Crichton that an appeal from sheriff-substitute is incompetent. The Sheriff says it would be contrary to the meaning of the Act to have any record or pleadings other than the petition and interlocutors. It was argued that the words "sheriff of the county" did not authorise the sheriff-substitute to hear the petition, as the interpretation clause did not provide that "sheriff" should include sheriff-substitute. The case of *Fleming* v. *Dickson*, 19th Dec. 1862, 1 Macph. 188 (upon similar words in the Schoolmasters Act, 24 & 25 Vict. c. 107), was expressly against that contention. [This decision was repeated in similar terms by Sheriff Napier in the Glasserton case, 10th October 1877. The Sheriff thinks the express words of Sect. 14 are sufficient for decision. Similar Kettle Case. April 29, 1876. Sheriff of Fife.

decisions have been given in the Sheriff Courts of Lanarkshire and Renfrew on the Registration Act, 17 & 18 Vict. c. 80, sect. 12, see 2 P. L. Mag. 22.]

Generally speaking, no expenses will be given in petitions under Sect. 14.

Kinloch Rannoch. July 28, 1873. Sheriff-Substitute of Perth.

In *Macintyre* v. *Corbet*, Sheriff-Substitute Barclay refused to give expenses. He was aware that other sheriffs had given expenses both for and against the returning officer. But the proceeding under Sect. 15 was strictly statutory, and the Education Act did not authorise an award of expenses. The proceeding was brought to vindicate a public right, and was defended by a public officer representing the public; and in such cases (as in questions of franchise under the Parliamentary and Municipal Elections Acts) it required statutory authority to give expenses (24 & 25 Vict. c. 83, sect. 37).

Meldrum Case. July 11, 1876. Sheriff-Substitute of Kincardine.

In *Harvey* v. *Duncan & Paterson*, where an allegation of corruption was made which was held to be irrelevant, Sheriff-Substitute Dove Wilson gave no expenses. "In these cases it seems to me a "good rule not to give expenses unless the litigation has been "vexatious and frivolous."

Where returning officer has rendered the elections invalid he will be found liable in expenses.

Cross and Burness Case. May 31, 1873. Sheriff of Caithness.

In *Armour* v. *Miller*, where the returning officer, by refusing to receive a nomination paper which the sheriff held to have been timeously presented, had rendered the whole election invalid, it was held by Sheriff Thoms that the returning officer, like any other unsuccessful litigant, was personally liable in expenses.

Tulliallan Case. June 9, 1876. Sheriff-Substitute of Perth.

In *Wright* v. *Smeaton*, where a returning officer, by recording his own vote, had rendered the whole election invalid, he was found liable in the expenses of a petition to have this declared. [As to action of damages for breach of duty by presiding officer, cf. Pickering *v.* James, L. R. 8 C. P. 489.]

Dunbar (Landward) Case. June 6, 1876. Sheriff of Haddington.

In *Dodds* v. *Notman*, it was held by Sheriff Davidson that where a returning officer had done his duty to the best of his ability, and especially where on petition he had been proved to have done it properly, he was entitled to expenses.

Invalid Elections. Sect. 15.

Whenever the election of a candidate is declared invalid, the school board ought to nominate a member.

Houston and Kill-

In *Findlay & Stewart* v. *Gemmill*, it was held by Sheriff Fraser that in every case where the election of a person was declared

invalid, the school board, if a quorum exist, should nominate a person to be member. He therefore refused to declare the unsuccessful candidate validly elected, or to appoint the returning officer to amend his return.

Allan Case. April 26, 1873. Sheriff of Renfrew.

Contra, where the sheriff can take the candidate who received the next highest number of votes to those returned.

In *Ronaldson* v. *Brown*, where Sheriff-Substitute Home, on finding that one candidate had not been duly elected, had remitted to the school board to elect a member in his place, it was held by Sheriff Monro that the provisions of Sect. 15 applied only where the election of a person is declared invalid and the full number of members cannot be supplied by taking the person who received the next highest number of votes to those returned as elected. The policy of the Act favours the voters rather than the school board in the matter of election. The Sheriff therefore appointed the returning officer to amend his return.

Whitburn Case. May 12, 1876. Sheriff of Linlithgow.

When the sheriff finds an equality of votes between two candidates, only one of whom has been returned, he cannot remit to returning officer, who is *functus officio*, but must intimate to school board.

In *Hope* v. *Macintosh*, where on a scrutiny it was found that a successful and an unsuccessful candidate had really obtained an equal number of votes, it was held by Sheriff-Substitute Orphoot that the returning officer had not performed his duty of determining which of these two candidates should be deemed duly elected, although, on an erroneous view of the validity of the ballot papers, he had declared one of them duly elected, and that the election of the candidate declared to be elected was therefore invalid. The Sheriff observed that he had no power under the statute to determine between two candidates having an equality of votes. Nor was it proper to remit the matter to the returning officer, who had power to determine such cases of equality only when they arose at the counting of the votes, and who was therefore *functus officio*. The Sheriff therefore ordered intimation to the school board in terms of Sect. 15.

Newlands Case. May 30, 1873. Sheriff-Substitute of Peebles.

It is illegal for a returning officer to vote, and such vote invalidates the election.

In *Wright* v. *Smeaton*, it was held by Sheriff-Substitute Grahame that a returning officer who had recorded his own vote in favour of one or more of the candidates, had become liable to objection *ratione suspecti judicis*, and disqualified from acting as returning officer, and that the whole election was therefore invalid. The Sheriff observed that the returning officer had to act not only ministerially in regulating procedure, but judicially in decid-

Tulliallan Case. June 9, 1876. Sheriff-Substitute of Perth.

ing on the reception or rejection of tendered votes, and specially in a case of equality of votes, in determining which candidate is to be deemed duly elected. As a judge, he was necessarily deprived of rights which, in his private capacity, it would be competent for him to exercise. There was no doubt that a judge having an interest in the cause was liable to objection [Erskine, i. 2, 25; Stair, iv. 39, 14]; and here the returning officer would have to decide on the reception or rejection of his own vote. The franchise which a returning officer was permitted to exercise in parliamentary elections, was specially given by statute where there was an equality of votes, and the returning officer was a registered elector. But under Sect. 14 of the Education Act, the vote of the returning officer was not confined to cases where he was himself an elector; and it was not a privilege which he might refuse to exercise, but a judicial act which it was his duty to perform. He was not merely to vote for his favourite candidate. [*Note.*—

Panbride Case. March 27, 1873. Opinion of Counsel.

In the case of *Panbride*, however, where a candidate had acted as returning officer, and had declared himself duly elected, it was the opinion of Solicitor-General Rutherfurd Clark, that though the matter was one for the determination of the sheriff (under Sect. 14) this did not render the whole election invalid. It was for the returning officer to decide whether there was a full number of proper nominations. In this case the returning officer resigned, and was re-elected by the remanent members of the school board in terms of Sect. 13.]

Duties of School Boards. Sect. 21.

A member of a school board may resign for a reasonable or necessary cause, but not at pleasure: the chairmanship may be resigned.

Hamilton Case. April 8, 1873. Opinion of Counsel.

Where a member of a school board desired to resign, for the purpose of becoming a candidate for the combined offices of treasurer and clerk (which the board had resolved should not be held by a member), it was the opinion of Solicitor-General Rutherfurd Clark that a member of a school board could not resign at pleasure. Whether, in consequence of infirmity or other necessary cause, the board might accept the resignation, was another question. [It may be observed that careful provision for resignation by notice is made in the Municipal Election and the General Police Acts; and for the resignation of managers, by Sect. 22 of the Education Act. Under Schedule II. of the English Education Act, 1870, a member of a school board may resign on giving one month's notice. But cf. Education (Scotland) Act, 1878, sect. 15.]

Edinburgh Case. March 1874. Opinion of Counsel.

Where the chairman of a school board, on being elected member of Parliament for the city, resigned both chairmanship and membership, it was the opinion of Dean of Faculty Rutherfurd Clark and Solicitor-General Watson that it was competent at any

time to resign the chairmanship, and that it was competent to resign membership for a reasonable or necessary cause, such as (in the case before them) the acceptance of a position either inconsistent with acting at all or with continuing efficiently to act as a member. A member was not entitled to resign from caprice, from dissatisfaction with the actings of other members, or, it might be, from dislike to the duties of the office and unwillingness to discharge them any longer. A letter from the member resigning the offices would be sufficient; and the school board, on receiving it, was bound to give effect to the resignation, and to fill up the vacancy in terms of the statute. [Cf. Education (Scotland) Act, 1878, Sect. 15.]

The election of a chairman at the first meeting of a school board is matter of direction, but not imperative.

Torthorwald Case. May 15, 1873. Opinion of Counsel.

Where one of five members failed to attend the first meeting of the school board, of which notice had been given by the returning officer in terms of Sect. 16, and the four members present being equally divided in opinion it was impossible to elect a chairman, it was the opinion of Solicitor-General Rutherfurd Clark that the election of a chairman at the first meeting was directory, not imperative, and that a new meeting might be called for that purpose, not by the returning officer, who was *functus officio*, but by one or more members of the board along with (*ob majorem cautelam*) the returning officer.

Whether a school board may be properly cited by service upon their clerk.

Harrison v. Tingwall School Board. April 9, 1877. Sheriff of Orkney.

In *Harrison* v. *School Board of Tingwall, Whiteness, and Weisdale, and Peter Garrioch their clerk*, which was an action for exhibition of a contract in the possession of Garrioch entered into between the pursuer and the school board, Sheriff-Substitute Mure, in dealing with the pursuer's account of expenses, held that only the clerk, who refused to exhibit the contract, and not the school board, ought to have been called as a defender. He did not say, as the defenders had argued, that school boards ought to be cited merely by service of the writ upon the clerk. It was desirable that the mode in which school boards are to sue and to be sued should be prescribed by statute. On appeal, Sheriff Thoms reversed this judgment, and held that as the contract in question was the property of the school board and in their possession through their clerk, it was necessary to call the school board as defenders. "As "a corporation they could not be cited (except when assembled at "a meeting) in any other way than by service on the members, or "the majority of them individually." [Cf. Mackay, 'Practice of the Court of Session,' i. p. 403.]

The clerk will not, in the absence of the school board, be ordered to furnish a ratepayer with extracts of the minutes.

Paterson & Roy *v.* Bennet, Aug. 15, 1878. Sheriff of Perth.

This was an action against the clerk of the school board of Abernethy for delivery of extracts of certain minutes of the school board which were alleged injuriously to affect the character of the pursuers' daughter and grandson, who had both been pupil-teachers in the school. Sheriff-Substitute Barclay ordered an extract to be given on the ground that, while the ratepayers were not entitled capriciously to overhaul the minutes, yet the school board was a public body, and the petitioners having a sufficient interest, were entitled to copies of the minutes at a reasonable charge. On appeal, Sheriff Lee held the action to be irrelevant. The Sheriff observed that no public interest was alleged in the minutes; and while cases of sufficient private interest might exist, it was impossible, in the absence of the school board (who had ordered the application for an extract to lie on their table), to ordain the clerk to deliver extracts. Such a decree against the servant of the school board would be inoperative. Were the school board a party, however, the Sheriff would still have to be satisfied that he was entitled to judge of the conduct of the school board, and that it was wrong. "There might be many matters of discipline in "regard to which the actings of a school board and its directions "relative to pupil-teachers and scholars, duly minuted, were within "the discretion of the board."

III.—SUPPLY OF SCHOOL ACCOMMODATION.

Sections 23-42.

Parish Schools. Sect. 23.

When, under Sect. 11, a burgh is dealt with as part of a parish, the schools erected and maintained out of the common good and managed by the magistrates, are, along with the customary contributions, transferred to the parish school board.

The school board of such united parish has all the rights of a parish and of a burgh school board, and is entitled to the school-buildings and the customary contributions.

Peebles School Board v. Magistrates of Peebles. Feb. 28, 1874. Second Division.

The burgh of Peebles contained a burgh grammar-school and a burgh English school, which had been erected and always maintained out of the common good of the burgh, and had been always under the exclusive management of the magistrates and town council. At the date of the passing of the Education Act, it was the custom to give from the common good £100 annually, one-half of which was paid to the teacher of each school. The parish of Peebles contained, besides the burgh or greater part thereof, a landward district, in which no parish school had ever been settled and no school assessment had ever been imposed. Under the 11th section of the Education Act, the Board of Education ordered that the burgh should be dealt with as part of the parish. The school board for the parish took possession of the schools, and demanded payment of the £100. The burgh contended that the schools were not transferred to the parish school board, as Sect. 24 transfers burgh schools to the burgh school board; and that they were not bound to pay the £100 for the benefit, not of the burgh only, but of the whole parish. On a special case presented to the Second Division of the Court of Session, it was unanimously held that the schools had been transferred to the school board of the parish, and that the burgh were bound to pay the £100 to the school board. Lord Justice-Clerk (Moncreiff), referring to the order of the Board of Education under Sect. 11, said: "The effect of that is, that the "school board of such a parish possesses all the powers of a parish "school board, and all the powers of a burgh school board within "such limits." Lord Benholme observed: "With reference to the "payment from the common good of the burgh, it is clear that "these two schools have hitherto existed for the benefit of the "whole parish, and I cannot see that it is inequitable that the "public benefit which the parish has enjoyed should be continued, "but that the administration of the schools should be vested in a "new body."

In a parish partly burghal and partly landward, the only parish school was situated within burgh, was chiefly used by residents in burgh, and was managed and maintained by agreement between burgh and heritors: *Held* it was transferred to school board of parish, not of burgh.

Selkirk Parish School Board v. Selkirk Burgh School Board.

The parish of Selkirk is partly landward and partly burghal, and includes the royal burgh of Selkirk. From time immemorial to the year 1863 there were under the same roof within the burgh a grammar or Latin school and an English school. The latter was managed and maintained by the burgh; the former under agreement between the burgh, who was the largest heritor in the landward district, and the other heritors there. In 1863 the burgh

June 5, 1875. Second Division.

school was removed to another site, and the whole of the old building became the parish school. There was no other parish school in the parish; it was chiefly used by the children of residents in the burgh. On the passing of the Act of 1872, the old school-building, with teacher's house and garden (which had been provided in terms of Sect. 13 of 43 Geo. III. c. 54), was claimed by the school board of the parish, under the exception contained in Sect. 23, as belonging to the landward district, and by the school board of the burgh as being situated within the burgh, and being the only parish school of both districts. On a special case, the Second Division of the Court unanimously held that the buildings and garden had been transferred to the parish school board. The Lord Justice-Clerk (Moncreiff), after referring to the interpretation clause and Sects. 8 and 9, said: "The effect of these provisions is, "that there can no longer be a parish, in the sense of the Act, which "is partly burghal and partly landward. When, at the date of the "Act coming into operation, a parish had a district partly within "the municipal or police boundaries of a burgh and partly land-"ward, all that lies within these boundaries is carried to the new "burgh school board, and what remains is handed over to the "school board of the parish. . . . To bring a school within "the exception in clause 23 it is necessary—(1) that it be situated "in a burgh; (2) that prior to the Act it was the parish school of "a parish partly landward and partly burghal; (3) that it be the "parish school of the landward district of such parish when the "Act came into operation; (4) that it be the school of a district "which, under the Act, comes to be managed by a school board "distinct from the burgh school board." His lordship then noticed the argument that this construction of the exception deprived of effect the rule in Sect. 23 which vests schools situated within burgh in burgh school boards, it being admitted that this rule cannot apply to burgh schools proper which were not established under the recited Acts. "That argument neglects to keep "in view the definition of the term 'burgh' in the interpretation "clause of the Act. Several cases may be figured in which schools "would fall under the rule in Sect. 23, and not under the excep-"tion. For instance, where a school is the school of a parish lying "outside a royal burgh, but wholly within the municipal or par-"liamentary boundary of the burgh, or where it is the school of a "parish consisting wholly of a parliamentary burgh, or part thereof, "or of a parish lying wholly within one of the populous places "enumerated in Schedule A." [Cf. Education (Scotland) Act, 1878, Sect. 29.]

Where the only school in a parish, and the teacher's house, have been rebuilt and maintained by the trustees of a private charitable trust, who also assisted the heritors in

appointing and paying the teacher: *Held* that the buildings were transferred under Sect. 23.

Terms and history of a trust, part of the income of which was paid to the parish schoolmaster, but was held not to fall under Sect. 46.

Caerlaverock School Board *v.* Hutton's Trustees. Feb. 4, 1876. Lord Young.

This was an action for declarator that the school called "Hutton "Hall," with teacher's house and land annexed, were vested in the school board under Sect. 23, and for decree for payment of £65 per annum, as vested in the school board for one or other of the trusts mentioned in Sect. 46. The trust, which was a general one for promoting piety and learning and assisting the poor, directed the trustees, who were the minister and kirk-session, to make an allowance to a schoolmaster presented by them to the presbytery and examined, and to settle one or more schoolmasters in the parish, to teach young children to read, and to make them an allowance, but without prejudice to the parish schoolmaster's right against the heritors. The capital fund, which was originally (in 1717) £900, had now an income of £900. In 1786 the trustees had, with the help of the heritors, rebuilt the only school in the parish, with a teacher's house and garden, and had since added to and maintained these buildings. The trustees and the heritors appointed the teachers; and since 1804 the heritors had also contributed to the support of the teacher, who was always called and treated as the schoolmaster of the parish. The trustees maintained that the school buildings were trust property, and did not vest under Sect. 23 in the school board; and that they held no moneys on the trusts mentioned in Sect. 46. Lord Young, in whose judgment the parties acquiesced, held that the school buildings were vested in the school board, but assoilzied the trustees from the conclusion respecting the £65 which they had been in use to pay to the schoolmaster.

A school was built on an entailed estate. The heir in possession appointed the teacher, and named a committee of management among the heritors, who supported the school without assessment. There was no agreement to substitute this school for the discontinued parish school: *Held* that it was not transferred under Sect. 23.

Stewart *v.* Little Dunkeld School Board. July 10, 1877. Lord Rutherfurd Clark.

In accordance with the general wish of the inhabitants of a district, the parish school, established under the Act of 1803 and erected on a certain entailed estate, was in 1866 discontinued, and a more convenient school built, with teacher's house and garden, on the same estate at the cost of the heir of entail, who from that time forward appointed the schoolmasters. The heritors contributed to the teacher's salary out of a private fund, but no assessment was ever laid on for this purpose. The school was managed,

not by the minister and heritors, but by a committee of heritors selected by the heir of entail. There was no evidence of a binding agreement between the minister and heritors on the one hand, and the heir of entail on the other, to substitute the one set of school buildings for the other. The heir of entail, who had in 1866 entered into possession of the discontinued school, demanded a rent for the new school buildings from the school board, who maintained that these premises, having been substituted by agreement for a parish school, were now vested in them by Sect. 23. In an action of declarator for removing brought by the heir of entail against the school board, it was held by Lord Rutherfurd Clark (and acquiesced in) that the school buildings were the private property of the heir of entail, and that the school board were bound to remove from them, and were not entitled to stipulate for re-entry to the discontinued school as a condition of removal.

A *second* parish school is not transferred under Sect. 23. A written title is not required for such transfer.

Straiton Case. Feb. 11, 1874. Opinion of Counsel.

The heritors of a parish agreed by resolution to erect a second parish school under Act 1803, to be examined by the Presbytery, and with the maximum salary. The heritors kept the schoolhouse in repair, but no written title was ever granted; and on the passing of the Act the building was claimed by the heritor on whose land it stood and by the school board. A majority of the heritors desired to transfer to the school board. On being consulted, Dean of Faculty Rutherfurd Clark said that the heritors were not entitled under the Act of 1803 to erect two schoolhouses, and this school was therefore not established under that Act. [M'Alister, 1854, 16 D. 736.] A written title would not have been necessary if the school had been legally erected. [It was not the practice to grant written titles before the Act 1 & 2 Vict. c. 87.] The majority of heritors could not bind the dissenting minority.

Heritors are not bound to transfer teachers' houses, where these have not been provided, or to continue money equivalent.

Girthon, Inverkip, and Stornoway Cases. Feb. 20, 1875. Opinion of Counsel.

In certain parishes, especially where there was only one heritor, the teacher, instead of getting the statutory house and garden, consented to take a money equivalent or to occupy rent-free a house belonging to the heritor, the teacher's house being either not built or in some cases thrown into the school. Several school boards raised the question, whether in such circumstances the heritors were not bound to transfer teachers' houses under Sect. 23, or to continue the money equivalents? On being consulted by the Board of Education, Lord Advocate Gordon and Solicitor-General Watson stated their opinion that the heritors were not bound to

transfer houses and gardens where these had not been provided. The statutes binding the heritors to provide houses and gardens were repealed by Sect. 78 of the Education Act. Even had these statutes not been repealed as regards houses and gardens, Sect. 23 of the Education Act would probably have transferred the liability to the school board. Even where a series of payments had been made, this was in law merely a consideration in respect of which the teacher did not insist on his rights, and not an equivalent for or implement of the statutory obligation. Heritors, therefore, could not be compelled to continue such payments. (Act 1696, c. 26; 43 Geo. IV. c. 54, sects. 8 and 10; 24 & 25 Vict. c. 107, sect. 17; Duncan's Parochial Law, p. 764.)

Circumstances in which a chapel school was not legally constituted a side school.

A school and teacher's house were built in 1840 by private subscription and parliamentary grant, and the title taken to the minister and kirk-session and church-managers of a chapel and district which were erroneously supposed to have been legally erected into a parish *quoad sacra*. The trustees appointed the first teacher. In 1861 the heritors and minister of the civil parish, in which there were already school buildings with the maximum salary under the Act of 1803, agreed, after considering the Schoolmasters Act of 1861, to allot a salary of £20 to the school, which they described, in advertising for a teacher, as "recently "constituted a parochial side school," and they appointed Mr Watson as teacher. The heritors expended nothing on the maintenance and repair of the school; and after the passing of the Act of 1872, the original trustees transferred the buildings to the school board of the parish, with the sanction of the Board of Education, in terms of Sect. 38. The question then rose whether Watson was the teacher of a "parish school" in the sense of the Act; that is, of a school established under any of the recited Acts—in this case, of a parochial side school? The school board maintained that the erection of side schools was authorised by Sect. 11 of the Act of 1803, not by the Act of 1861. The opinion of Dean of Faculty Rutherfurd Clark, was: "I do not think that the "heritors had the power to erect, or that they did erect, the chapel "school into a parochial side school. I am disposed to think that "Mr Watson cannot be regarded as a parochial schoolmaster within "the meaning of the Act of 1872. Unless the school were legally "constituted a side school, I do not think he could be elected to "the office of a parochial teacher, which is properly a public office." Avondale Case. Oct. 1875. Opinion of Counsel.

The right to demand transfer rests, not on title, but on prior appropriation by right to public uses.

In advising the school board in this case, Mr John M'Laren, advocate, observed, that in order to establish a proprietary right to Holm Case.

March 21, 1877. Opinion of Counsel.

a school building the school board must show that such a right was previously vested in the heritors, or in some other body representing the public uses to which the building was appropriated. Under the Acts of 1696 and 1803, it was not necessary to vest a title to the school buildings in any one; it was sufficient if site and buildings were appropriated. But the Education Act did not give a title where none existed. It merely gave the school board right to continue the previous uses, the radical title remaining with the proprietor, to whom the buildings would revert when they ceased to be required.

The right of the school board to make surprise visits to the school for examination of the teaching and scholars is not so clear that the Court will interdict the teacher from refusing admission.

Kelso School Board *v.* Hunter. Dec. 18, 1874. First Division.

Hunter, the teacher of the Kelso public school, refused to admit to the school two members of the school board, who were deputed to visit the school at irregular intervals during school hours, for the purpose of inspecting the school and ascertaining that the work was being properly conducted. The school board petitioned the sheriff to interdict Hunter from preventing or excluding them from entering the school, whenever they might deem it necessary in the discharge of their duties under the Act. The Sheriff-Substitute (Russell) granted interdict, finding as matter of law that, as it was the duty of the board to keep the school efficient, they were entitled to visit the school in a reasonable manner whenever they pleased. Sheriff (Pattison) dismissed the petition as incompetent, because it sought to interdict a person from refusing to do something, and not to continue an existing lawful possession. The school board appealed to the First Division of the Court of Session, who recalled the judgments of both Sheriffs, and refused the prayer of the petition. Lord President Inglis said it was competent to ask for interdict against any one obstructing a party in the exercise of an undoubted right or the discharge of a clear duty. But the right or the duty must be very clear. It was assumed that the board were entitled to send any of their members at any time without notice to inspect the teaching in the school. That was not clear. It was not intended that the school boards should superintend the management of the schools. They were to protect the interests of the ratepayers, on the one hand, and, on the other, to provide sufficient school accommodation. For these purposes, the board had certainly the right to visit the school. The visitorial power of the presbytery was abolished, not transferred, by Sect. 23; and the individual minister had no statutory right of superintendence. When the board wished to ascertain the inefficiency of a teacher, Sect. 60 provided, not for personal inspection, but for a report by her Majesty's Inspector. [This, however,

applies only to "old teachers."] "On the whole matter, I am of "opinion that the school board have not, on the face of this "statute, so clear and undoubted a right to visit this school "for the purpose of superintending the teaching and examining "the scholars as to induce me to grant interdict against any one "molesting them in the exercise of that right." Lord Deas observed that interdict was a *quasi* criminal remedy, to be given only for urgent reasons and in the plainest terms. It could not be qualified by the word reasonable, or any other element of uncertainty. The right to make surprise visits was not expressly given by the Act; and interdict would put the teacher under the risk of criminal proceedings whenever he differed from the board as to the propriety of a visit. Lord Ardmillan: "I entertain no doubt of "the right of the school board to visit the school, or to appoint "members of the board to visit and enter the school. The Act "intrusts to school boards important duties, extensive manage- "ment, and the power appropriate and required for the discharge "of these duties. The school board have a right to dismiss new "teachers, and to complain of any teacher. It is said that the act "of dismissing or complaining cannot be preceded by personal "inquiry. I have no hesitation in negativing that." One of the duties of the board was to keep the school efficient, not merely as a building, but as an educational institution. The school board was entitled to visit the school in order to ascertain its efficiency as an educational institution, and that without previous notice; for notice would defeat the object of the visit. His lordship stated that his view of the rights of parties coincided with that expressed by Lord Young in *Hunter* v. *School Board of Kelso* [Dec. 16, 1874]; but he thought that the terms in which interdict was asked for in the present case were too broad.

Or the school board from entering.

In *Marshall* v. *Ardrossan School Board*, Sheriff Campbell reversed the decision of Sheriff-Substitute Anderson, who, in deference to the judgment of the Court of Session in *Kelso School Board* v. *Hunter*, had granted interdict at the instance of the public-school teacher against the school board entering the school without his consent for the purpose of examining the scholars. The teacher, in support of his application for interdict, alleged that in 1875 the school board had asserted a right to examine the school, and during the examination had spoken insultingly to him before his scholars, and had afterwards inserted in a Glasgow newspaper a scurrilous article relating to him and his school. They had now intimated their intention of holding a second examination on a day named. The Sheriff explains that in *Kelso School Board* v. *Hunter*, the Court did not decide against the right of the board to enter the school for the purpose of examination, but refused to decide a "doubtful" question in a *quasi* criminal pro-

Marshall v. Ardrossan School Board. July 10, 1876. Sheriff of Ayr.

cess of interdict. To grant interdict in the present case would be to commit the decision of the question to the schoolmaster.

The school-house is to be used only for educational purposes.

Lawson *v.* Kettle School Board. June 1878. Bill Chamber.

A school board resolved to allow a horticultural society to use the public school for a flower-show. A member of the board applied for interdict, alleging that the resolution was *ultra vires* of the board, and that the flower-show would be injurious to the school buildings, which had recently been fitted up with new and valuable furniture. Lord Adam granted *interim* interdict, on the ground that the holding of a flower-show was not an educational purpose within the meaning of the Act.

A. *v.* B. April 1878. Sheriff-Substitute of Perth.

Under a local Water Act for the town of Perth, 40 & 41 Vict. c. 161, there was a public "rate" for maintenance of the works imposed on the owners of all lands and heritages, and a "domestic "rate" imposed on the occupiers. Only one half of the "domes- "tic rate," however, was to be imposed on "buildings or parts of "buildings appropriated and occupied as shops, warehouses, mills, "manufactories, counting-houses, chambers, or offices of any de- "scription." The Water Commissioners assessed all school buildings at the same rate as dwelling-houses. On appeal, it was held by Sheriff-Substitute Barclay that school buildings were probably places of business, and were certainly not dwelling-houses.

Burgh Schools. Sect. 24.

The teacher's house, in burghs as well as in parishes, is transferred to the school board, as well as the class-rooms. A dismissed teacher may be removed from his house by summary warrant.

Whyte *v.* Haddington School Board. July. 9, 1874. First Division.

The school board of the burgh of Haddington, in terms of Sect. 60 (2), removed Whyte, the rector of the Burgh Academy, as "unfit and inefficient." The latter having refused to leave his dwelling-house, which was part of the same building as the school, the school board obtained a warrant of ejectment from the sheriff, of which Whyte brought a suspension in the Court of Session. This was refused by Lord Young, but Whyte reclaimed to the First Division of the Court. He argued that Sect. 23 did not apply to burgh schools, that Sect. 24 did not transfer teachers' houses to burgh school boards, and that in the Act "school" meant class-rooms, unless otherwise defined. The Court unanimously adhered to Lord Young's judgment. Lord President Inglis pointed out that both in Sect. 23 and in Sect. 24 the word "school" was used to include school buildings; and though Sect. 24 did not mention teachers' houses, that was explained by the fact that the statutes required a teacher's house to be provided in the case of a parish school, while in the case of burgh schools it was neither

necessary nor usual to provide teachers' houses. Besides, in the present case both school and teacher's house were under one roof and formed one establishment, devoted to one object from time immemorial. It was impossible to separate them; and this teacher's house, therefore, was part of the "school" transferred by Sect. 24. If there had been a separate house for the schoolmaster in a different part of the town, given possibly to the teacher after the period of his appointment, that might have created some difficulty.

Supply of School Accommodation. Sects. 27-36.

The Board of Education are entitled to decide not merely the extent of additional accommodation, but the *manner* in which it is to be provided.

Carluke Case. April 5, 1875. Opinion of Counsel.

A school board reported to the Board of Education, in terms of Sect. 27, their opinion and determination as to the extent to which additional school accommodation was required, and the manner in which it should be provided. The Board of Education offered no objection to the *amount* of accommodation proposed. The question then arose whether the school board might of itself order and direct the manner in which this was to be provided. It was the opinion of Dean of Faculty Rutherfurd Clark, on Sects. 27 and 28, that, as both the extent and the manner of providing the additional accommodation were involved in the question of "efficiency" of the scholastic establishment, the Board of Education were entitled to decide both. Even if sufficient accommodation was provided, the Board of Education might require the erection of a separate female school. Probably their powers would not enable them to determine what class of teachers should be employed in the school, but they would be entitled to say that the schools were not efficient by reason of proper teachers not being employed.

Where circumstances alter, the school board ought to reconsider the question of school accommodation, and submit their resolution to the Board of Education.

The Court will interfere with the Board of Education only where they have gone outwith the statute, or have not applied their minds to the question of school accommodation.

Lord Advocate *v.* Stow School Board. Feb. 19, 1876. First Division.

The Board of Education approved, in terms of Sect. 28, of a determination of the school board of the parish of Stow, with respect to additional accommodation. The school board, having got the temporary use of a private school, and the price of labour being high, delayed to carry out the determination. The Lord Advocate, in terms of Sect. 36, presented a petition and complaint to the First Division of the Court, who, after hearing parties, unanimously ordained the school board to comply with the requisition

of the Board of Education, and found them liable in expenses. Lord President Inglis observed: "It has been suggested that, "after the approval of such a determination, circumstances might "so alter as to render it inexpedient or improper to proceed." If such a case arose, it would be the school board's duty to reconsider the matter, and to submit the resolution they might form on such reconsideration to the Board of Education. Lord Deas observed that the Court had power to interfere with the action of the Board of Education in such matters only in two cases: (1) where the Board of Education had refused or failed to apply their minds to the question of school accommodation in the parish; (2) where the Board of Education had gone contrary to or outwith the statute.

Is it competent for the Board of Education to require the erection of a teacher's house?

Lord Advocate *v.* Strathmiglo School Board. Nov. 18, 1876. First Division.

This case was similar to the preceding. The answer of the school board was, that they were negotiating the transfer, under Sect. 38, of a trust school, which the Board of Education had previously approved as the best possible supply of additional accommodation, and that they had the *interim* use of this school. It was argued for the school board that it was incompetent, under Sect. 36, to ordain the erection of a teacher's house, which, though included in the determination, they were not bound under the statute to provide. The Lord Advocate consented to this matter being struck out of the decree.

Where Board of Education have made inquiry, it is irrelevant to allege concealment by the school board in their opinion and determination.

M'Lean, &c., *v.* Kilbrandon and Kilchattan School Board. Nov. 29, 1877. Second Division.

This was an action brought against a school board by certain persons residing in the island of Easdale, the parents of children of school age who were in need of elementary education, for declarator that it was the duty of the school board to make suitable provision for the elementary education of such children resident on the island, by supplying the deficiency which they alleged to exist; and for decree ordaining the school board to provide school accommodation and a duly qualified teacher, or otherwise ordaining the school board to inquire how such accommodation might be most conveniently provided, and to report the whole facts and circumstances to the Board of Education for their determination in terms of the Act. The pursuers averred that there were in the island of Easdale ninety-five children of school age; that for forty years prior to the passing of the Act there had been a separate school and teacher in the island, which latterly had been under the management of the Education Committee of the Free Church, but which had now been discontinued by the school board; that the school board, through the votes of certain members who cor-

ruptly desired to favour their own children, had resolved—(1) that there should be no school in Easdale at all, and afterwards (2) that there should be a class-room for children under eight years of age, which left sixty-five children of school age unprovided for; that the school board, in reporting under Sect. 27, had wilfully concealed from the Board of Education the following facts: (1) the extreme danger to life in both winter and summer to children crossing the tempestuous arm of the sea which separates Easdale from the adjacent island of Seil, on which the nearest public school was erected; (2) the danger to health from exposure in an open boat, and from waiting at a ferry without shelter; (3) the breadth of the sea, and in the insufficiency of the ferry-boat: and that, in consequence of this concealment, the Board of Education had approved of the second-mentioned determination of the school board, and had declined to entertain the representations against it subsequently made by the pursuers. The pursuers therefore pleaded that the refusal of the school board to erect a school on Easdale was not a fair and reasonable exercise of their discretion in selecting school accommodation; and that, as the school board had concealed material facts from the Board of Education, the pursuers were entitled to the decrees craved. The school board replied by denying that there was any danger at the ferry, which was in common use, and by explaining that the locality had been visited and reported on by a member of the Board of Education before their approval of the opinion and determination of the school board. Lord Adam dismissed the action as incompetent (irrelevant?). His lordship points out that the facts said to be concealed were not occult, but must have been under the observation of the reporter to the Board of Education. That Board, however, had again considered the case on the representation of the school board; and as they had applied their minds to the question of school accommodation, and taken reasonable means to satisfy themselves on the subject, the Court of Session had no jurisdiction to review their determination. The pursuers reclaimed against this judgment to the Second Division (Lord Justice-Clerk, Lords Ormidale and Gifford), who unanimously adhered to it.

Proceedings for providing Schools. Sect. 37.

The Court approved of a lease of a private trust school to the school board, who undertook to give higher education, the trustees reserving power to nominate free scholars.

M'Culloch, &c., *v.* Johnston's Trustees and School

Under "Johnston's Mortification" (dated in 1639), money was left in trust "for erection of a *free* grammar-school and maintenance of poor scholars, with a sufficient learned, able schoolmaster that can fit them for the universities." Owing to the smallness of the fund, the trustees, who were the kirk-session and heritors

Board of Dalry. July 20, 1876. Second Division.

[see *Earl of Galloway* v. *Minister and Kirk-session of Dalry*, Feb. 22, 1810], were able to provide nothing but elementary education in their school, which was the only school in the village of Dalry. The school board appointed a teacher capable to teach the higher branches, and an assistant. The trustees agreed to lease their school-teacher's house and garden to the school board for four years, at a small rent, and to pay to the school board nearly the whole income of the trust estate, subject to the conditions—(1) that the higher education should be given so as to fit those who wished it for the university; (2) that poor children, recommended by the parochial board, should be taught free. This agreement was sanctioned by the Board of Education. An action was then raised by poor persons residing in Dalry against the trustees and the school board, for declarator that this agreement was illegal, and that the trustees were bound to keep a free grammar-school. The agreement was said to be a breach of trust, and also illegal, under Sect. 38, which was said to apply to endowed schools as well as subscription schools, and which provides for a transfer, not a lease. The trustees pleaded that the arrangement was the best possible for the purposes of the trust. Lord Shand assoilzied the defenders. His lordship thought the agreement was legal under Sect. 37 of the Act, and within the discretion of the trustees. Against this judgment the pursuers reclaimed to the Second Division of the Court, who substantially adhered to the judgment of Lord Shand. Lord Justice-Clerk Moncreiff observed that Sect. 38 did not apply to an endowed school of this kind, and that there was no breach of trust in the trustees carrying out the founder's intention by a payment to the school board. But it was illegal to delegate to the parochial board the selection of the children who were to receive gratuitous education in the higher branches. Any delegation of power was illegal; and the parochial board would certainly nominate pauper children. Lords Neaves, Ormidale, and Gifford concurred. The Court accordingly declared that the power of nominating free scholars must remain with the trustees, and that the school board were bound, during the agreement, to give such free scholars education which would fit them for the university.

A member of a school board is not entitled to feu land to the school board.

Leith Case. Dec. 1873. Opinion of Counsel.

Where a school board, consisting of nine members, unanimously desired to feu a school site from one of their number, the latter was advised by Mr J. B. Balfour, advocate, that the proposed transaction was illegal: "I think it must be taken to be settled, "as a rule of universal application, that no trustee, or person in a "fiduciary position, shall be allowed to enter into engagements in "which he has, or can have, a personal interest conflicting, or which "may possibly conflict, with the interests of those whom it is his "fiduciary duty to protect. So strictly is this principle adhered

" to, that no question is allowed to be raised as to the fairness or " unfairness of the transaction : but it is enough if parties interested " object; and it makes no difference whether the contract relates " to real estate or personalty, or mercantile transactions, or whether " the trustee is vendor or purchaser in the transaction. It appears " to me that the memorialist, as a member of the school board, is a " trustee. It will be for the memorialist to consider whether there " is any probability of challenge. Such challenge would probably " be sustained at the instance of either a ratepayer or a subsequent " school board." This opinion was acted on by the intending seller, who resigned his seat on the school board in order to carry through the transaction.

Contra, if the land-owning member abstain from voting in the matter. The price ought to be fixed by statutory arbitration.

Contracts to supply work or materials entered into between a member of a school board and the school board are voidable at the instance of the school board, but not void.

General Case. June 25, 1875. Opinion of Counsel.

The same question occurred in the Eyemouth school board, and also in several parishes where all the land belonged to one proprietor, who was a member of the school board. An opinion on the general question was therefore taken from Lord Advocate Gordon and Solicitor-General Watson by the Scotch Education Department. The memorial referred to the Scotch cases of *Pender* v. *Henderson,* 20th July 1864, 2 M'Ph. 1428, and *Tasker* v. *Shaw's Water Company,* 22d Dec. 1866, 5 M'Ph. 256, and to the English cases of *Burgess* v. *Wheate,* 1 Ed., 226, and *Bentley* v. *Craven,* 18 Beav., 75 : " We are of opinion that landed proprie- " tors, although members of the school board, may lawfully sell and " convey to the board in feu, or otherwise, sites for schools, teachers' " houses, and gardens. The resolution of the board to acquire a " site from one of their own number, being a land-owner, for the " purposes of the Act, must, in order to its validity, be carried by " the votes of a quorum and majority of the board, independently " of such land-owner. It appears to us, however, that it would be " expedient that the consideration to be paid by the board, whether " it be a slump price or a feu-duty, should, in such cases, be ascer- " tained and fixed under the provisions for the taking of land by " agreement of the Lands Clauses Act. The principles given effect " to by the Courts of England and Scotland in the decisions cited " in the memorial, and the considerations on which these principles " rest, have, in our opinion, no application whatever to such cases " as are referred to in this query, where a member of the board " may be the only person who can supply that which is necessary " for the board, and where the Legislature have constituted a special " tribunal for the purpose of determining what it is fair and rea-

"sonable that the board shall pay for their acquisition. [See Education (Scotland) Act, 1878, Sect. 31.]

"The case of tradesmen is less favourably situated—because in "the general case there are many firms or persons, other than mem- "bers of the boards, who can supply the work or materials required "by the board; and, in these cases, the price to be paid by the "board must be fixed by agreement between them on the one "side, and the individual member on the other, and not by an "independent statutory tribunal. All we can say regarding such "contracts between the board and a member is, that in law they "are not void, but voidable at the instance of the board—in other "words, that the board can compel implement of the contract, if "they conceive it to be for their advantage, but the other contract- "ing party cannot. Whilst, therefore, it appears to us that the "board may not only legally, but as matter of fair administration, "enter into such contracts, where circumstances, such as are re- "ferred to in the memorial, render that course pecuniarily advan- "tageous, it is manifestly expedient that, in the general case, such "contracts ought to be avoided."

[It may be added that Sect. 70 of the English Education Act, 1870, provides that no member of a school board shall in any way share or be concerned in the profits of any contract with, or any work done under, the authority of the school board, subject to a penalty, on summary conviction, not exceeding £50, and loss of office. But the section expressly excepts, *inter alia*, the case of any sale of land, or any contract made with, or work done by, a company in which such member holds shares, if he does not vote on the school board with respect to such sale or contract. The other exceptions are loan of money and insertion of advertisements in newspapers. It was held in *Tanfield* v. *Reynolds*, 39 J. P., 293, that printing bills for the returning officer, which were afterwards paid for by the school board, constituted an offence against this section.]

A school board is not entitled, without the sanction of the Board of Education, to sell superfluous land acquired, but not required, for a school site. A ratepayer is entitled to interdict such a proposed sale.

Hart v. Auchterarder School Board. Feb. 25, 1878. Sheriff of Perth.

A school board purchased ground in terms of Sect. 37, the feu disposition declaring that the site was for a public school, playground, residence for teachers, and for no other purposes whatever. Their successors afterwards resolved to sell, by private bargain, a portion of the ground, which was let to an agricultural tenant, as unnecessary, the price it was proposed to apply in reduction of rates or of the debt secured on the rates. The sanction of the Board of Education, or of the Education Department, was not obtained. There was no meeting of ratepayers, nor was the consent of the superior obtained. It appeared that the ground proposed to

be sold was unsuitable for any school purpose, being close to a graveyard. On the application of a ratepayer, Sheriff-Substitute Barclay held that the sale was *ultra vires*, and interdicted it. It was argued for the school board that the sale was authorised by Sect. 36, and that the sanction of the Board of Education was required under that section only for the purpose of securing the building grant. But it was pointed out that Sect. 36 applied only to discontinuance or change of site. The reference of Sect. 37 to the Lands Clauses Act, 1845, Sect. 13, was confined to the sale of superfluous lands purchased by agreement for extraordinary purposes. Nor did it seem proper for the school board to part with this particular ground without limitations as to use. No power of sale could be implied from the desirability of avoiding loss to the ratepayers. On appeal, this judgment was affirmed by Sheriff Lee, who observed that the original purchase of the ground was not challenged, and that the Education Act made no provision for the sale of superfluous land. It was not alleged that no site could have been obtained without the purchase of this ground. [Education (Scotland) Act, 1878, sect. 31.]

[It may be observed that, by Sect. 22 of The English Education Act, 1870, the powers of sale, leasing, and exchange contained in the Charitable Trusts Acts from 16 & 17 Vict. c. 137, to 32 & 33 Vict. c. 110, are incorporated as regards lands or schoolhouses not required by the school board, the Education Department coming in place of the Charity Commissioners.]

Transference of Schools. Sects. 38 and 39.

Stipulations for reversion, pre-emption, or restricted use, must not be inserted in transfers under Sect. 38; but a reasonable servitude for lights or access may be so.

A school board must not accept use of school by tolerance instead of lease.

The continuance of a school—even one built with Government grant—is entirely in the discretion of the managers.

Free Church Schools. October 1873. Opinion of Counsel.

On the general question of the transference of the schools of the Free Church to school boards, a memorial was submitted to counsel by a special commission of the General Assembly of the Church. Many of these schools were built with the aid of parliamentary grants, subject to the conditions of Government inspection, and that no sale, exchange, or mortgage of the premises should be valid without the consent of Government, unless the amount of the grant should be repaid (18 & 19 Vict. c. 131). This latter condition is not expressed in the model trust-deed, which, however, excludes the powers of sale and mortgage. The memorial stated that the reservation permitted by Sect. 38 of a right to use, so far as consistent with public uses, was of great importance to

Free Church congregations; but that apparently, unless such reservation could be constituted a real burden on the premises, or could be made the subject of a stipulation binding the school board, in the event of their selling the transferred premises, as they might do under Sect. 36, to provide for similar uses in other buildings, the reserved right might become altogether nugatory. The following general opinion was returned by Lord Advocate Young, Solicitor-General Rutherfurd Clark, and Mr Campbell Lorimer, advocate:—

"The schools, &c., to which clause 38 of the Act applies, are "such as have been erected or acquired with funds contributed, "or gifted, for the purpose of promoting education. With respect "to such schools, it was contemplated by the Legislature as prob- "able, or at least possible, that the persons charged with the "administration of the trusts on which they are held might think "that the objects of the trusts (*i.e.*, the purposes for which the "funds with which the schools were erected or acquired had been "contributed or gifted) would be as well or better served and pro- "moted by transferring the schools to the statutory boards, than "by retaining them under their own management. They are "accordingly authorised, notwithstanding of the trusts attaching "to them, to transfer them to the boards, wherever the boards, "with the sanction of the Board of Education, are willing to take "them over. The schools, when transferred, must of necessity be "used for the very purpose for which they were erected or ac- "quired; and assuming the trustees to have judged rightly that "the management of the boards would be as good as their own, "and so promote the cause of education as efficiently, the object "of the contributors in giving their money will be as completely "satisfied. In this, which we think the sound view of the mat- "ter, any payment to the trustees for the buildings would be im- "proper. For, first, the transference involves only a change of "managers, and the purpose of the charitable contributors of the "funds with which the property was acquired will, as we have "already observed, be as well effected by the new management as "it was by the old; and this must be assumed to be the opinion "of all trustees who resolve to transfer under the Act. Second, "were a price paid, it would have to be raised by local rates, of "which the very contributors to the original acquisition of the "property would have to pay their shares. Lastly, the money "would not be paid to these contributors, but to their trustees, to "be applied to some other purpose than that for which the con- "tributions were made, for that purpose is to be effected in the "future by the new managers, as it was before by the old.

"It is therefore a misuse of terms to speak of transfers under "the Act as 'handing over property to the country gratuitous- "'ly.' It is more accurate to say that the school boards are "authorised to relieve the existing trust managers of the schools

" in question, and those who supply them with funds for their " maintenance, of the labour and cost of their future management " and maintenance, wherever these managers resolve that the pur- " poses for which they hold them will be thereby as well or better " effected. To regard any schools to which the clause applies as " the property of the Free Church, and capable of being turned to " profit, and the money applied to other purposes than the trans- " fers, when made, are intended to serve, would be a complete " misapprehension of the matter. No pressure whatever is put " upon the existing trust-managers, who are left in every case to " act or not according to their judgment upon the question, " whether the purpose for which they hold the schools will be best " served by retaining them, or by transferring them to the school " boards. A corresponding liberty of judgment is given to the " boards, to reject or accept an offer of transference, according to " their view of the eligibility of the offer. But as tranferred " schools instantly become public schools, and are thenceforth " altogether indistinguishable from other public schools under the " Act, all parties must, in forming their judgment with a view to " take or abstain from action under Sect. 38, have in view the " whole provisions of the Act applicable to public schools. It " would be *ultra vires* and incompetent for a school board to accept " a transfer on terms which would render any of the provisions " inapplicable, or which would even restrain and fetter them in " the execution of their duties under the Act, according to their " judgment as occasions for action arise.

" We further think that the only transference contemplated or " allowed by Sect. 38, is the transference of the existing title in " such manner as will invest the board and divest the existing " holders. A reasonable servitude to protect lights, or a clause of " pre-emption in the event of a sale, we think would not be legally " incompetent, though we cannot give a clear opinion on this " point. But in cases where such clauses would seem to be rea- " sonable, as where the school building is in connection with that " of a church, and habitually used for ecclesiastical as well as edu- " cational purposes, we venture to suggest that transfers ought not " to be offered; and if offered, ought not to be accepted, at least " otherwise than quite unconditionally. In such cases it is im- " probable that the contributors to the erection of the school will " object (assuming they are entitled) to the discontinuance of the " school and the application of the building to church purposes " exclusively; and we think the school board had better erect a " new school at the charge of the rates, than have one so annexed " to a church as to require the protection of extraordinary clauses " in the transference."

The same learned counsel stated their opinion on particular questions submitted :—

(1.) That it would not be competent to stipulate as a condition

of transfer (*a*) that if the premises should cease to be used by the school board for the purposes of the Act, the property should revert to the congregation; or (*b*) that in the event of a sale by the school board the congregation should have a right of pre-emption, subject, however, to the doubts previously expressed as to the legality of a clause of pre-emption; or (*c*) that in the event of a sale the school board should be bound to provide otherwise for the reserved use; or (*d*) that no use not contemplated by the Act should be made of the premises without consent of the deacons' court and congregation. A school board could not lawfully accept a transfer on conditions (not expressly authorised by the Act) which would fetter them or their successors in the execution of their duties under the Act.

(2.) That it would not be competent for a school board to accept the use of premises, not by way of lease but by way of tolerance, for an indefinite period, relieving the congregation of all annual burdens while the use lasts, and without payment to the congregation.

(3.) That a reasonable servitude, to protect rights or to secure access to an adjacent property, would not be inconsistent with a transfer.

(4.) That Government have no power to compel the managers of a school built with the aid of Government grant to continue such school, or to repay the grant.

(5.) That neither a school board, nor the ratepayers, nor a member of the congregation, nor a subscriber to the building, have any power to compel the managers of a school to carry it on, whether built with Government grant or not. The question of continuing a voluntary school depended on the money received and the number of scholars attending, and was entirely within the discretion of the managers. Congregations and subscribers, legally interested in the trusts as beneficiaries or as contributors, would be entitled, according to the ordinary rules of law, to compel the execution of such trusts where they had not been extinguished by transfer under the Act. [Cf. Free Church of Scotland Properties Act, 1878.]

A school dedicated to special purposes, or necessary for execution of trust, cannot be transferred.

Personal debts of trustees or managers cannot be transferred.

Shedden's Mortification, Beaton's Charity, &c. June 30, 1873. Opinion of Counsel.

On being consulted with reference to the proposed transfer of these schools, which are under trusts for religious instruction, Solicitor-General Rutherfurd Clark and Mr Taylor Innes stated their opinion generally, "that the Education Act does not authorise the transfer of the trust; and where the school is dedicated "to special purposes, or is necessary for the due execution of the "trust, we think it cannot be transferred. . . . Sect. 38 applies "only to schools which have been erected for the promotion of "education generally, and where the transference can be made "without sacrificing any trust purpose." With regard to the

question whether it could be made a condition of transfer that the school board should pay a debt due to the trustees, or to others, contracted on account of the school, but not charged on the trust subjects, counsel observed that "the statute may authorise the "transfer of such a debt as necessarily passes with the school, but "the school board is not entitled to take over the personal debts "of the transferrors." [For examples of transfer under sect. 23 of the English Education Act, 1870, cf. Burnham National School, 29 L. T. (N. S.) 495, and National Society *v.* London School Board, L. R. 18 Eq. 608.]

Sect. 38 does not authorise the transfer of money.

A trust estate consisted of school buildings and large funds administered in connection with the school. It was directed by the truster that the teachers should devote the greater part of their time to teaching Latin, Greek, Mathematics, &c. It was the opinion of Dean of Faculty Rutherfurd Clark that a transfer was incompetent under Sect. 38—(1) because that section did not authorise the transfer of money, and the trustees could not administer the trust funds without retaining the school; (2) because the school board could not undertake to carry out the truster's direction above quoted.

Nairn Case. Rose Institution. Sept. 1874. Opinion of Counsel.

A portion of a trust estate may be transferred.

Where a schoolhouse and teacher's house were erected on a site acquired by certain heritors under 4 & 5 Vict. c. 38, and held by them on a general educational trust for the children of the poorer classes in the parish or its vicinity and for a teacher's residence, it was the opinion of Lord Advocate Gordon and Solicitor-General Watson that there was nothing incompetent in the trustees transferring, and the school board accepting, only the schoolhouse and a portion of the land, the teacher's house and the remaining land being reserved by the trustees for payment of debt.

Mid-Calder Industrial School. Feb. 20, 1875. Opinion of Counsel.

IV.—FINANCE AND PARLIAMENTARY GRANT.

Sections 43-53, 67, 70, 78.

School Fund. Sect. 43.

The expenses of a complaint under Sect. 60 (1), which was dismissed as unreasonable, may be charged against the school fund.

Where a school board proceeded against a teacher under Sect. 60 (1), in respect of cruel treatment of scholars, and the sheriff

Greenlaw Case.

1875. Opinion of Counsel. found the teacher not guilty, declaring that the complaint had been instituted without reasonable grounds, and found the teacher entitled to expenses, it was the opinion of Dean of Faculty Rutherfurd Clark, and Mr Macdonald, advocate, that, as the proceedings were not *ultra vires* of the school board, the expenses could be legally charged against the school fund. [It has been laid down by the English Local Government Board, auditing a school board election account, that sums paid for refreshments to the election staff should be disallowed. But a reasonable charge for constables will be passed. In one case it was said that, looking to the terms of Sect. 14 of the Ballot Act 1872, the school board were entitled to the use, free of charge, of ballot-boxes, stamping-machines, &c., belonging to the borough. Cf. Circular, p. 452.]

Power to Impose School-Rates. Sect. 44.

The rate is to be imposed on owners or occupiers so as to make the aggregate amounts recovered from the two classes approximately equal.

General Case. May 15, 1873. Opinion of Counsel. According to the opinion of Solicitor-General Rutherfurd Clark, given to the Board of Education, the school-rate, whether collected by the parochial board or by the school board, is in every case to be imposed on owners and occupiers in equal portions.

Glasgow Case. August 1875. Opinion of Counsel. Where a school board, whose district included several parishes, certified to a parochial board 3d. as the amount of the school-rate on each pound of rental, the inspector of poor was advised by Solicitor-General Watson that the rate should be imposed, not in equal halves of 1½d. on owners and 1½d. on occupants, but in the proportion of $1\frac{7}{16}$d. on owners and $1\frac{9}{16}$d. on occupants, or "in "such proportions as would make the aggregate amount realised "from owners and occupiers respectively as nearly as possible "equal." [This is in conformity with the principle laid down by the Court of Session in the case of Galloway *v.* Nicholson, 19th March 1875, 2 Rettie 650, for the recovery of poor law assessment under 8 & 9 Vict. c. 83, sect. 34, and 24 & 25 Vict. c. 37. The principle is, that the aggregate sum is to be divided, and one-half laid on owners as a class, and one-half on occupants as a class. As Lord President Inglis explained: "In the case of "owners, the assessment must always be paid in full, for the col- "lector has the value of the tenement to fall back upon. But in "the case of occupants, the assessment may be much diminished "by unoccupied houses and irrecoverable arrears."]

The parochial board are not entitled to deduct cost of collection.

Cargill and Mu- According to the opinion of Dean of Faculty Rutherfurd Clark, given to the parochial and school boards of Cargill and

Muthill, the parochial board, in paying over the sum certified by the school board, is not entitled to deduct the cost of collection— the question being one, not of equity, but of statutory direction. [A similar opinion was given to the Board of Education by Lord Advocate Gordon and Solicitor-General Watson. Cf. Education (Scotland) Act, 1878, sect. 32.] Muthill Case. June 1874. Opinion of Counsel.

Where school board certify a rate per £1, the risk of recovery falls on school board.

In this case, it was also the opinion of Lord Advocate Gordon and Solicitor-General Watson, that the parochial board were not entitled to deduct the expense of collection. They added, that where the amount of the deficiency was certified as a slump sum, the parochial board was bound to pay the whole of that sum out of the rates levied by them; but where the school board certified the amount on each pound of rental which the parochial board was to lay on and collect as school-rate, the loss of such rate, so far as irrecoverable, would fall on the school board. The parochial board were not entitled to levy a larger sum than what was certified in order to cover expenses or irrecoverable claims; and where part was irrecoverable, the parochial board were not bound to make good the loss. [Cf. Education (Scotland) Act, 1878, sect. 32.]

[The Board of Supervision, however, have instructed the parochial boards to deduct unpaid arrears and the necessary cost of collection, upon the ground that the cost of collecting the school-rate is not a legal charge against the poor law assessment.] Brechin Case. Feb. 20, 1875. Opinion of Counsel.

Parish ministers are not liable in school-rates.

In *Lindsay* v. *Inglis*, where school-rate was assessed on the parish minister as *occupant* of the manse, Sheriff-Substitute Anderson held that the minister was not liable, because under the 44th section liability for school-rate depended on liability for poors-rate. The Sheriff-Substitute observes that in the case of *Cowan* v. *Gordon* (*vide infra*), Lord President Inglis pointed out that the cases of *Cargill & Forbes* v. *Gibson* rested on peculiarities which applied to poor-rates, and not to any other local assessment. Kilmaurs Case. May 21, 1874. Sheriff-Substitute of Ayr.

In *M'Laren* v. *Mackenzie*, Sheriff-Substitute Barclay held that a parish minister was not liable for school-rate assessed on manse, glebe, and garden. He proceeds on the words "that the law "applicable to the imposition, collection, and recovery of poors- "assessment shall be applicable to the school-rate." Kenmore Case. Sept. 9, 1875. Sheriff-Substitute of Perth.

In *Frazer* v. *Robb*, Sheriff Heriot, affirming the judgment of Sheriff-Substitute Robertson, held that clergymen of the Established Church are exempted from payment of school-rates. The learned Sheriff says the 44th section makes the imposition or in- Kirriemuir Case. Dec. 24, 1875.

Sheriffs of Forfar.

cidence of the school-rate and the poor-rate identical; and points out that under the old Poor Law Acts [1579, c. 74; 1663, c. 16; and 1672, c. 18], as interpreted in the case of Heritors of Cargill *v.* Tasker, 29th February 1816, F. C. 103, and under the Poor Law Amendment Act, 8 & 9 Vict. c. 83, as interpreted by the House of Lords in Gibson *v.* Forbes, 14th June 1852, 24 Sc. Jur. 524, and 1 M'Q. 106, parish ministers were exempt from poor-rates in respect of their manses and glebes. If the exemption was originally customary, the custom was negatively sanctioned by the Act of 1845 [the 49th section of which declares that parish ministers are liable in poor-rates in respect of their *stipends*]. The 44th section also directs the parochial board to add the one rate to the other, and to collect the one along with the other; and where there is no poor-rate, the school board are to assess and levy the school-rate "in the same manner as if it were poors-assessment." These directions are inconsistent with the liability of persons not liable to poor-rate. The Sheriff added that the school-rate is not a new tax, but the extension of an old tax; and a very clear expression of intention would therefore be required to render liable persons previously exempt. The case was entirely different from that of Cowan *v.* Gordon.

Unst Case. April 9, 1877. Sheriffs of Orkney and Shetland.

In *Anderson* v. *Smith*, Sheriff-Substitute Mure held that the parish minister was liable for school-rate assessed on him as occupant of the manse and glebe. He points out that, according to the principles for the interpretation of taxing statutes laid down by the House of Lords in the *Mersey Dock* case, and by the Court of Session in *Adamson* v. *Clyde Navigation Trustees*, 27th January 1860, 22 D. 606, "there was no exemption from taxation, general "or local, in this country of any property whatever, except Crown "property." The case of *Cargill* was decided on the strange ground that ministers were neither heritors, tenants, nor possessors of the manse and glebe. The case of *Forbes* v. *Gibson* proceeded on existing usage, combined with the 49th section of the Poor Law Amendment Act. The latter is now practically repealed by 24 & 25 Vict. c. 37. As liferenters, ministers are thus liable [being both owners and occupants in the sense of the Poor Law and Valuation Acts] to pay school-rate under the 44th section of the Education Act. The phrase "imposition of an assessment" in the Poor Law Act, either means the resolution to lay on the tax, or it refers to the whole sum to be levied; and in the Education Act it does not refer to the incidence of the tax on individuals. The phrase "laws applicable to the collection of poor-rates," refers to the 88th section of the Poor Law Act. The Sheriff-Substitute considers the school-rate to be a new tax, "schoolmaster's salary" having been raised according to *valued rent* from owners only, and for different purposes. The "addition" of the school-rate to the poor-rate directed by the 44th section refers to the whole sum required.

This judgment was reversed by Sheriff Thoms, who adopted the reasoning of Sheriff Heriot in *Fraser* v. *Boyd*.

Contra.

General Case. May 15, 1873. Opinion of Counsel.

According to the opinion of Solicitor-General Rutherfurd Clark, given to the Board of Education, the school-rate is a new tax, no usage of exemption can be pleaded by parish ministers, and they are therefore liable to assessment in respect of their manses and glebes. The opinion refers to Cowan *v.* Gordon, 10th July 1868, 6 M'Ph. 619 [where, in the absence of prior exemption, parish ministers were held liable in respect of their manses and glebes to assessment under the Kirkcudbright Roads Act, 1864].

Maxwelltown Case. July 2, 1874. Sheriff-Substitute of Kirkcudbright.

In this case Sheriff-Substitute Nicholson held that the minister of a *quoad sacra* parish was liable in school-rate in respect of his manse and glebe, on the ground that the plea of usage of exemption could not be extended from poor-rates to school-rates. [A similar judgment was pronounced by Sheriff Crichton in the Anstruther case in 1878.]

Brydekirk Case. Sept. 2, 1875. Sheriff-Substitute of Dumfries.

In *Parochial Board of Annan* v. *Gourlay*, where a claim for poor-rates, school-rates, and cemetery-rates was made against the minister of a *quoad sacra* parish in respect of his manse, the minister admitted liability for school-rates; and Sheriff-Substitute Hope held that he was also liable for poor-rates, on the ground that the 8th section of Sir James Graham's Act, 7 & 8 Vict. c. 44, conferring on *quoad sacra* ministers the status, powers, rights and privileges of parish ministers, was limited in its operation to ecclesiastical rights, and did not extend to civil matters, such as the payment of poor-rates. The Sheriff-Substitute mentions, that by a decision in the Sheriff Court of Airdrie, the ministers of *quoad sacra* parishes had been held not to be liable in poor-rates; and that, according to the opinion of Mr Schank More, acted on by the Board of Supervision, the exemption was transferred by the Graham Act to the ministers of *quoad sacra* parishes such as were formerly parliamentary charges under 5 Geo. IV. c. 90.

Is a public teacher appointed prior to 1872 liable in school-rates?

Lerwick Case. May 1876. Sheriff-Substitute of Shetland.

In *Sandison* v. *Hunter*, it was held by Sheriff-Substitute Mure, that a public school teacher who, since his appointment in 1854, had been exempt from payment of poor-rates, was nevertheless liable for poor-rates in respect of his occupancy of house and garden, and that his previous personal exemption could not be regarded as an emolument secured to him by the Education Act 1872, sect. 55. But although the teacher appeared as owner on the valuation roll, he was not liable as owner, the subjects having vested in the school board, who ought to have returned themselves

as owners. The valuation roll was conclusive only as to the yearly value of the subjects.

A season-tenant, though not on valuation roll, is liable in school-rates.

Kilmaurs Case. May 21, 1874. Sheriff-Substitute of Ayr.

In *Lindsay* v. *Semple*, where Semple had been in the beneficial occupation of a glebe, but his name did not appear in the valuation roll as either tenant or occupant, it was held by Sheriff-Substitute Anderson that Semple was liable in school-rate, &c., because he had reaped the crop, though he alleged himself to be a mere season-tenant, such as those who take grass at a public sale, and who are not usually charged with rates.

The trustee on a bankrupt estate is bound to pay poor and school rates in full, though he has not taken possession of effects on the bankrupt's premises.

Hall *v.* M'Caig. July 4, 1878. Sheriff-Substitute Galbraith.

The collector of school and poor rates claimed in a sequestration a preference for the full amount of the rates due by the bankrupt at the date of bankruptcy in respect of his occupancy of a dwelling-house. The claim was based on the Acts 8 & 9 Vict. c. 83, sect. 88, and 35 & 36 Vict. c. 62, sect. 44. The former section provides that poor-rates shall be paid out of the first proceeds of the bankrupt estate preferably to all other private debts. The trustee having rejected the claim, an action was brought, to which the trustee pleaded that he had not sold or taken possession of any effects in the house, which was still occupied by the bankrupt. The Sheriff-Substitute held that the statutory preference extended over the whole estate, and was not confined to the proceeds of effects upon the premises rated.

An obligation granted prior to 1872 to relieve of schoolmaster's salary does not apply to school-rates.

Steuart *v.* Earl of Seafield. March 1, 1876. First Division.

Two conveyances of land, dated in 1861 and 1867, contained an obligation to relieve the disponee of, *inter alia*, schoolmaster's salary. The disponee raised an action for declarator that this obligation extended to school-rates imposed under Sect. 44. Lord Young assoilzied the disponer, debtor in the obligation. His lordship observed that the meaning of the obligation was, that the disponer would continue to pay the portion of the schoolmaster's salary [which had a statutory maximum] assessed on the valued rent of his lands without asking any contribution from the purchaser. By the Act of 1872, the valued-rent heritors were no longer called on to provide schoolmaster's salary. There might be no rate at all. The rate was not laid on valued rent, and it was to supply a fund out of which all the educational charges of

the parish were paid (for instance, the expenses of an election), and not merely the remuneration of teachers. Against this judgment the disponee reclaimed to the First Division of the Court, who affirmed Lord Young's judgment, Lord Deas dissenting. Lord President Inglis said the incidence and the purposes of the new rate were entirely different from those of the old tax, and there was now no schoolmaster of the parish. The cases under the Poor Law Amendment Act did not apply, for the tax there was always imposed on heritable subjects and applied to the same objects. Lords Ardmillan and Mure concurred. Lord Deas observed, there was still a schoolmaster, drawing a salary, although he might have ceased to be a public officer. He thought relief should be given from the rate so far as it was applicable to schoolmaster's salary; otherwise the obligation was destroyed. [In *Elliott* v. *Marquis of Lothian*, 3 Sh. 348, it was held that an obligation of warrandice from schoolmaster's salary extended only to the maximum salary allowed by the law in force at the date of the obligation.]

Where schoolmaster's salary is excepted from a general obligation to relieve of burdens, granted prior to 1872, the exception applies to school-rates.

In this case, where, by lease dated prior to 1872, a tenant was bound "to pay all road-money, public, parochial, or other burdens "imposed on said lands, and payable by the tenant or occupant "[cess, minister's stipend, and *schoolmaster's salary* excepted]," it was held by Sheriff-Substitute Barclay that this exception applied to school-rates, of which the landlord was therefore bound to give relief. The Sheriff says that "school-rate" is not a new tax, but the equivalent and synonym of "schoolmaster's salary." The case is stronger than that of *Hunter* v. *Chalmers*, 16th July 1858, 20 D. 1311 [where, although the Poor Law Amendment Act of 1845 made great changes in the poor-rate, it was held that an obligation in a feu-charter to relieve of public burdens payable out of the land in all time coming applied to the altered poor-rate]. Robertson v. Miller. April 2, 1875. Sheriff-Substitute of Perth.

The school board are not bound to inform the ratepayers whether any portion of the rate will be employed in providing religious instruction.

In *A.* v. *Marshall*, it was held by Sheriff-Substitute Robertson that the school board were not bound to inform the ratepayers whether any portion of the rate would be employed in providing religious instruction. [In an English case, *Shelley School Board* v. *Overseers of Shelley*, Q.B., December 1873, the overseers pleaded, against the precept for a school-rate issued by Coupar-Angus Case. Jan. 1874. Sheriff-Substitute of Forfar.

the school board under Sect. 54 of the English Education Act, 1870, that the deficiency of the school fund was caused by the school board providing accommodation for children not resident in the parish. The Court held that the proper remedy in such a case was to object to the expenditure at the audit of the accounts.]

Power to Borrow. Sect. 45.

School boards are not entitled to borrow for the improvement and furnishing of existing schools; they may borrow for the purchase of additional playground.

Perth Case. 1875. Opinion of Counsel.

On a general query put by the Public Works Loan Commissioners with respect to the powers of borrowing possessed by school boards, it was the opinion of Solicitor-General Watson that Sect. 45 authorised borrowing by school boards only in two cases—viz., the providing and the enlarging of a schoolhouse. Sect. 45 excluded the objects contemplated by Sect. 37—viz., the improvement and furnishing of existing schools. The policy of the statute was to put the expense of improving and furnishing existing schoolhouses on the present body of ratepayers, and to impose no liability on future ratepayers except in the case of a new schoolhouse being built or purchased, or of substantial additions being made to an existing schoolhouse, so as to afford accommodation for an increased number of scholars. In the Perth case, Solicitor-General Watson was accordingly of opinion that money might not lawfully be borrowed under Sect. 45 for the mere alteration and improvement of existing schools, but that it might lawfully be borrowed for the purchase and laying out of an *additional* playground to an existing school.

The word "schoolhouse" in Sect. 45 includes all suitable and customary appurtenances.

General Case. Oct. 1874. Opinion of Counsel.

It was proposed by the school board to borrow for the construction of outhouses in connection with the existing school, and for enclosing the grounds with a substantial stone-and-lime wall. On a query put by the Public Works Loan Commissioners, it was the opinion of Solicitor-General Watson that the word "schoolhouse" in Sect. 45 included, not merely the buildings in which the children are taught, but all suitable and customary appurtenances, such as a playground with enclosing walls or fences. If, therefore, the school board proposed to build a new school or to increase the accommodation for scholars in an existing school, they would be entitled to include in the estimate of the sum required for providing or enlarging the schoolhouse, the sum required for providing an enclosure in the one case, or a suitable enlargement of the playground with corresponding fences in the other. In the Kirkcud-

bright case Solicitor-General Watson was of opinion that the money, being required for improving the condition and conveniences of an existing school, could not be borrowed under Sect. 46.

Are school boards entitled to borrow by overdraft?

Commercial Bank of Scotland *v.* Lady School Board. Oct. 1878. Lord Rutherfurd Clark.

This was an action by the bank to recover the balance of their account with the School Board of Lady, Orkney, which was opened in 1874. In August 1875 the treasurer of the Board presented to the bank an extract minute signed by the chairman, requesting an overdraft of £400, which was allowed. This minute, it afterwards appeared, was the minute of a meeting of the combined Boards of the parish of Lady and of the parish of Cross and Burness. The School Board of Lady, elected in 1876, repudiated this combination, denied that the minute of 1875 was binding on them, and in answer to this action, pleaded that a school board had no power to borrow by overdraft, and that the consent of the Board of Education to the loan had not been obtained in terms of Sect. 45. They also endeavoured to show that the money had been applied to the use of a particular Free Church school before the date of its formal transfer to the Board under Sects. 38 and 39. It was held by Lord Rutherfurd Clark that the money had been received by the Board and applied to their purposes, and that they were therefore liable to repay it.

Existing Bequests. Sect. 46.

Terms of a trust held by minister and elders, the income of which did not fall under Sect. 46.

Coldstream Case. May 1874. Opinion of Counsel.

In 1801, £500 was given by Mr Bell to the minister and elders, the interest to be applied "for the education of poor people in "Coldstream's children." The truster suggested the branches of teaching useful for boys and girls respectively; and added, that where children were able to earn anything for their support, night schools might be useful. In 1803 he gave £300 more to the same trustees, to apply the interest in making additions to "the wear-"ables of your scholars when they are about to leave school," not, however, so as to distinguish them "from the scholars of any other "school." The letters constituting the trust, which were addressed to the minister, further expressed the truster's hope that "the "master would take care to inform his scholars of the great obliga-"tions they were under, and the great respect and love they ought "to have for you and your elders." It was the opinion of Dean of Faculty Rutherfurd Clark that, although the trustees would probably use the parish school, they were not bound to do so, and therefore, that the trust income was not subject to any of the trusts mentioned in Sect. 46.

Customary contributions for retiring allowances, repairs, and cleaning, as well as for salaries, fall under Sect. 46.

Dunbar School Board *v.* Magistrates and Town Council of Dunbar. March 18, 1876. Second Division.

For seven years prior to the passing of the Act, the town council of Dunbar had paid £60 as salary to teachers in the burgh school, £10 or £12 for repairs and cleaning, and £42 allowance to a teacher who retired on full pay. The school board sued for declarator that all these sums, amounting to £112 *per annum*, were payable to them under Sect. 46. Lord Shand disallowed the claim for retiring allowance, because there was no understanding that when such allowance ceased by the death of the holder, its amount should be applied to any school purpose. The school board reclaimed to the Second Division of the Court. The Lord Justice-Clerk (Moncreiff): "We intend to deal with this case on "the principle of equitable adjustment—viz., that the payment "should be as nearly as possible what the school has hitherto "actually cost the town. The granting of retiring allowances was "part of the ordinary expenditure on the school, but a retirement "on full salary is exceptional. We are of opinion that the burgh "should pay £80 annually to the school board."

Section 46 is not confined to cases where an invariable sum has been by custom contributed, or where a sum has been contributed for the prescriptive period, but the average annual expenditure must be taken for a period immediately preceding 1872.

Perth School Board *v.* Magistrates and Town Council of Perth. Oct. 19, 1878. Second Division.

Prior to the passing of the Act, it had been the custom of the burgh of Perth to pay annually the sum of £225 for the teachers in Perth Academy, or "The Seminaries," and a sum of about £100 annually for repairs, insurance, prizes, school apparatus, and furniture, &c. The school board raised an action for declarator that the burgh were bound under Sect. 46 to continue these payments. The burgh pleaded that the sum of £100 was not a contribution within the meaning of Sect. 46 to be applied for promoting higher instruction; and generally, that by the Perth Burgh and Harbour Act, 1856, obtained when the burgh was in a state of insolvency, it was provided that so long as certain bonds of annuity should remain unredeemed, it should not be lawful for the town council to apply any part of the ordinary revenues, property, or common good to any other purpose than payment of these bonds, and such *other debts and obligations as they might from time to time be responsible for by law*, and to such disbursements as should be necessary; . . . or otherwise for the proper management of the affairs of the city. The burgh further explained that there were still unredeemed bonds of annuity of large amount, and that since 1856 they had merely continued payments to teachers

appointed for life before the date of the Act. The burgh also lodged a state showing their expenditure on the Academy (exclusive of teachers' salaries) for ten years prior to 1872. It consisted of comparatively small annual items for fire insurance, city clerk's account, glazier-work, smith-work, mason-work, plaster-work, plumber-work, slater-work, poor's rate, police and sewer rate, allowances for school furniture and brooms, sweeping chimneys, advertising and printing, the average amount of which the burgh admitted to be due. But they objected to an annual average being calculated on a sum of £42 paid in 1866 for wright-work, a sum of £72 paid in 1869 for painter-work, and two sums of £18 each paid in 1870 and 1871 for private improvement rate, expended in the construction of a permanent pavement and roadway. No argument was submitted to the Court on the local Act of 1856; and Lord Young, in disposing of the case, observed, that its provisions could not affect the question, as "the customary contribution out of the "common good of a burgh to the support of a burgh school is a "debt or obligation for which the burgh is responsible by law." As regards the sum paid to teachers, his lordship rejected the plea that the liability of the burgh was confined to the case of teachers with whom they had actually contracted. As regards the sums paid for repairs, &c., his lordship allowed all the items except the private improvement rate, adding the following observations: "Had Sect. 46 of the Education Act only applied to burghs in "which an invariable sum was customarily contributed annually "to the burgh school, its application would probably have been "very limited—if indeed it would have been operative at all—for "the common, if not universal, case was that the contributions "were to a considerable extent variable according to the require-"ments of the school within the ability of the common good to "meet them without departure from the custom of the burgh in "that matter. The administrators of the common good were also "the managers of the school by whom the expenditure on it was "incurred and defrayed from time to time, according to necessarily "varying circumstances. It would have been manifestly incon-"venient, and was, so far as I know, not according to the custom "of any burgh, to make an invariable annual payment from the "common good whether required or not, and so to establish a "school fund accumulating in some periods and exhausted in others. "The intention of the Education Act was to continue the charge "or burden on the common good at its previous amount." His lordship then expressed his approval of an average for ten years being taken, and added: "There is here no question about rates, "for prior to the Act of 1872 there were no rates for education "within the burgh, and rates authorised and levied for another "purpose could not be used for education. The common good of "a burgh consists of the burgh property (including customs and "market dues) exclusive of assessments, which are all appropriated "to statutory uses." The decree accordingly found that it was the

custom of the burgh prior to 1872, to contribute to the burgh school out of the common good a sum of £286 (£225 for teachers' salaries, and £61, the average of other expenditure), and that the burgh was bound to pay this sum to the school board, to be applied and administered by them in terms of the Act.

Upon a reclaiming note to the Second Division, it was argued for the Magistrates and Town Council of Perth (1) that the "custom" referred to in the Act meant a custom legally binding, one which had endured at least forty years; (2) that the payments to particular teachers had originally been gratuities, or at least payable under individual contracts, and that since the Perth Burgh and Harbours Act, 1856, these had been discontinued whenever a vacancy occurred. It was also suggested that only an *interim* rate of contribution should be fixed. The Court, however, adhered to the judgment of Lord Young. Lord Gifford observed: "I am of opinion that the effect of "this provision is to convert the amount of the customary payments "made by any burgh for behoof of a burgh school into a permanent "annual debt to be paid after 1872 to the school board of the burgh "appointed in terms of the Act. The sum so to be paid is not "intended to relieve the school-rates, but is specially destined to "a different purpose"—viz., the promotion of secondary or higher education. . . . "I think the custom referred to in the statute "does not mean either obligation on the part of the town council, "or right on the part of the burgh school. It is sufficient that a "contribution in point of fact has been in use to be made, even "although it should depend on the mere good pleasure of the town "council, and were dependent on an annual grant or Act of Coun- "cil. Nor do I think that the custom must have subsisted from "time immemorial, or for forty years. I think a much shorter "duration will suffice. What precise time will be required is left "indefinite by the statute, and will depend upon the circumstances "in which the payments have been made. . . . I do not think "it is of any consequence to consider what was the precise appli- "cation of the sums from time to time contributed. Whether the "sums were paid as fixed salaries to the teachers, in addition to "the school fees, or as retiring allowances to superannuated teachers, "or in supporting or repairing the school buildings, or in paying "taxes or insurance thereon, they are all payments for behoof of "the school, and as such must now be permanently made to the "school board." With regard to occasional outlay on wright and painter work, his lordship observed that the cost of renewal must be spread over a number of years. The other judges concurred.

Prior to 1835 a burgh had contributed to the burgh school (besides interest on mortifications amounting to £19, 3s. 4d.) a variable sum for usher's salary, and £9, 0s. 10d. to the rector, who also got a house worth £25. The burgh

also repaired the school building. From 1835 to 1860 the burgh was under trust, and some of these payments were suspended. In 1869 the burgh resolved to pay £100 *per annum* while satisfied with the school. This was paid till 1872. In 1877 the school board converted the school into one for higher-class teaching. *Held* the burgh was bound to continue in perpetuity payment of £100 *per annum* (which was held to include the interests of mortifications), and also £27 *per annum* as the average expenditure on repairs for ten years prior to 1872.

School Board of Dunfermline *v.* Magistrates and Town Council. Oct. 19, 1878. Second Division.

In this case, by minute dated in 1869, the town council resolved to make to the burgh school an annual payment of £100, "intended to be a permanent endowment so long as the school "continues to be conducted to the satisfaction of the council, but "that it may be withdrawn at any time if that condition be not "fulfilled." On the passing of the Act the school board maintained that they had a right to the grant in perpetuity—(1) because, the council having lost the management of the public school, their power of expressing dissatisfaction had lapsed; (2) because it was the custom of the burgh to pay the grant; (3) because the grant was partly an equivalent for the dwelling-house of which the council had deprived the rector. The school board also claimed the average for ten years prior to 1872 of the annual sums expended by the council on repairs of the High School and on prizes and examination fees, and the interest of a fund of 1000 merks mortified in 1678 by the kirk-session of the Abbey Church in the hands of the council for the use of the "doctor" or usher of the school, and certain other sums paid to rector and music-teacher. The council maintained (1) that they were under no obligation to pay the grant in perpetuity; (2) that the obligation was extinguished by the transfer to the school board of the power of management; (3) that they were entitled to withdraw the grant, as the school board could apply it for the higher instruction and not for the benefit of all classes of the community, and had in 1877, in terms of Sect. 63, altered the school from an elementary into a higher-class public school; (4) that payment for three years did not make "custom" in the sense of Sect. 46; (5) that the sum of £100 included the interest of 1000 merks; (6) that expenditure upon alterations of the school in 1869 should be excluded from the calculation of average repairs; (7) that money paid for repairs, not being applicable to the promotion of higher instruction, did not fall under the terms of Sect. 46. The important facts of the case are stated in the following judgment of Lord Gifford. [After stating that the legal principles established by the Perth and Dunbar cases must be followed :—]

"It is admitted that from time immemorial the Magistrates and "Town Council of Dunfermline have contributed towards the sup- "port of the burgh school and its teachers. Prior to 1833, the cus- "tomary contributions appear to have been—*First*, The providing "and maintenance of the school buildings, including the rebuilding "of the schools when required, and all repairs and annual charges; "*second*, the provision of a free house for the rector and the main- "tenance thereof; *third*, the payment of an annual sum of £8, "6s. 8d. sterling, to each of the rectors and the teacher of music, "being the interest, apparently, at 10 per cent of the sum of £2000 "mortified by Queen Anne in 1610; *fourth*, an extra annual pay- "ment to the rector of £9, 10s. sterling, out of the common good of "the burgh; and *fifth*, prior to 1835 the council made an annual "donation towards the salary of an usher out of the common good, "in addition to the annual interest of 1000 merks Scots, mortified "in the hands of the town council by the kirk-session of Dun- "fermline.

"In 1835 the affairs of the burgh became embarrassed, and were "placed under trust, and this trust subsisted till the year 1860, "when the magistrates and council were reinstated in the burgh "property. During the subsistence of this trust, the payments by "the town council for behoof of the burgh school were necessarily "interrupted, at least to some extent. The school buildings and "the rector's house, however, seem to have been maintained as be- "fore, and the rector for the time accepted a composition in lieu "of his former allowances.

"In 1860 the trust for the creditors of the burgh was brought to "an end, and the magistrates and council were reinvested; and since "that date, chiefly from the workings of minerals in the property, "the burgh revenue has very greatly increased. It now exceeds the "sum of £8000 *per annum*.

"In 1869 the rectorship became vacant, and the town council, on "26th July 1869, adopting the recommendations of a school com- "mittee which they had appointed, passed a series of resolutions "regulating the constitution of the school, and fixing the payments "which were to be made for behoof of the school from the burgh "funds. These resolutions are embodied in the Special Case, pp. "6 and 7. Their substance, in so far as payments from the burgh "funds are concerned, seems to me to be the following:—

"*First*, The separate house for the rector is abolished, and the "whole buildings, including the rector's house, are to be made avail- "able for teaching purposes, and put into proper order and repair.

"*Second*, That an annual grant of £100 be given from the cor- "poration funds; but 'this grant, although intended to be a "'permanent endowment so long as the school continues to be con- "'ducted to the satisfaction of the council, may be withdrawn at "'any time if that condition is not fulfilled.' This grant of £100 "*per annum* is afterwards allocated, £70 to the rector and £30 to "the English master.

"*Third*, That the rector shall also receive £8, 6s. 8d. per annum, "being the interest of Queen Anne's mortification.

"*Fourth*, The town council also guaranteed that the emolu- "ments of the rector and English master should reach a certain "minimum; but as this was only for the first year after their ap- "pointment, it does not materially affect the points now in dispute.

"The question really is, are the resolutions of the magistrates "and town council on 26th July 1869 to be taken as the measure "of the customary payments now to be made by the town council "to the school board in terms of the Education Act; or in estimat- "ing said customary payment, must the resolutions of 26th July "1869 be laid out of view, and regard be had solely to the state of "matters existing prior to the town's embarrassment in 1835, and "thereafter on its reinvestment in 1860?

"Now the words of the statute are that the constant sum to be "paid to the school board shall be the sum which it has been the "custom of the burgh to pay for the burgh school prior to 1872, the "date of the passing of the Education Act; and it could scarcely "be maintained that what followed upon the resolutions of 1869, "which only subsisted at most for three years, would constitute in "law a permanent custom. The resolutions themselves, although, "of course, binding in a question with any teachers who may have "been appointed under them, might have been reconsidered and "altered at any time by the town council itself. In short, as the "measure of the school board's right under the Education Act is "custom and nothing else, I should have great difficulty in holding "that the resolutions of 1869, which were entirely pendent upon the "will of the town council, and which only subsisted for three years, "constituted *per se* a 'custom,' in the sense of the Education Act.

"It does not follow, however, that the resolutions of the town "council of 1869 are to be entirely disregarded and laid out of view. "They do not of themselves, followed by only three years' usage, "constitute 'a custom;' but they may be, and I think they are, "very important as expressing or exhibiting the interpretation given "by the town council itself of what they held themselves bound to "do for behoof of the burgh school; and if there is no unreason- "able disproportion in substance and effect between the resolutions "of 26th July 1869 and the previous custom of the burgh, going "back necessarily before its embarrassment in 1835, and having "regard to the whole circumstances in such case, I should be dis- "posed to attach very great weight to the resolutions of 1869, and "I would not lightly disturb what the town council then, after "the fullest consideration and deliberation, resolved to do.

"Taking the case as to amounts roughly and generally, the sums "paid prior to the town's embarrassment in 1835, seem to have "been the following:—

"Rector's dwelling-house, say . . .	£25	0	0
"Two sums of £8, 6s. 8d. for rector and "music-teacher, ...	16	13	4

"Additional annual payment, . . .	£9	0	10
"Maintenance and renewal of school build-			
"ing, say	30	0	0
"Contribution towards usher's salary, includ-			
"ing interest of 1000 merks, say .	10	0	0
	"£90	14	2

"While by the resolutions of 1869 the council agreed to pay:—

"(1) Annual grant, ...	£100	0	0
"(2) Interest on Queen Anne's mortification,	8	6	8
"(3) Maintenance of school buildings, say as			
"before, ...	30	0	0
	"£138	6	8

"Now, although the resolutions of 1869 seem to commit the town "to a considerably larger sum than was paid prior to the town's em- "barrassment in 1835, still, keeping in view the whole circumstances "—the suspension of the town's management from 1835 to 1860, "and the present condition of the town's affairs—I do not think "that the resolutions of 1869 were an unreasonable reading of the "town's customary obligation in reference to the burgh schools; and "I think that the town council themselves then fairly measured "and fixed what the customary obligation was. They dealt liberally "with the burgh school, but they were quite entitled, if not really "bound to do so.

"I am therefore of opinion that the sum now to be paid from the "common good of the burgh of Dunfermline to the school board, "in terms of the 46th section of the Education Act, ought to be "in conformity with the resolutions of the town council of 26th "July 1869, and I propose to answer the special questions put "accordingly as follows:—

"*Answer* 1*st*. I think the magistrates and town council are "bound to pay to the school board, as from Martinmas 1875 and "in perpetuity, at the term of Martinmas yearly, the sum of £100, "and also the sum of £8, 6s. 8d., being the interest on Queen "Anne's mortification, and that from the corporation funds or "common good of the burgh.

"*Answer* 2*d*. I think the magistrates and town council are also "bound to pay to the said school board, as from Martinmas 1872 "and in perpetuity, yearly, the sum of £22, 10s., as arranged by "the parties, as the average expenditure for maintaining the school "buildings.

"*Answer* 3*d*. But I think the magistrates and town council are "not bound to pay the school board any further sum, and in "particular, are not bound to pay interest on the mortification of "1000 merks, that interest being held to be included in the sum "of £100 sterling mentioned in the first answer."

Lord Ormidale and the Lord Justice-Clerk concurred.

Where trust income directed to be disposed of in putting children to school, and down to 1872 the children had been put to the parish school: *Held* the income did not fall under Sect. 46.

But where income appointed to be paid in addition to schoolmaster's allowance, *held* that this fell under Sect. 46.

School Board of Salton *v.* Bishop Burnet's Trustees. March 23, 1876. Lord Young.

This was an action by a school board, with consent of the teacher, against certain trustees for declarator that the trust funds, in so far as appointed (1) "to be paid in addition to the schoolmaster's "allowance," or (2) "to be disposed of in putting to school, to "learn reading, writing, and casting accounts, children of the "poorer sort," were held in trust for behoof of the parish school, or for the promotion of said branches of education in that school, or to increase the income of the teacher thereof; and that the income ought therefore to be paid to the school board to be applied in terms of Sect. 46. The trustees were the two largest heritors in the parish and the minister. They had been in the habit of using the parish school for the purposes of the trust above recited; but after the passing of the Education Act, 1872, they resolved that, as they had now no direct power of nominating the teacher or of regulating the course of instruction, they would transfer the children to another school, and pay the teacher there the additional allowance. Lord Young pronounced the following decree: "Finds (1) that the direction contained in "the codicil of Bishop Burnet's will, referred to on record, that "thirty children of the poorer sort shall be put to school to learn "reading, writing, and casting accounts, does not constitute a trust "for behoof of the parish school of Salton, or any other trust fall-"ing within the operation of the Education (Scotland) Act, 1872, "and to this extent and effect assoilzies the defenders from the "conclusions of the summons; finds (2) that the appointment by "the said codicil of 100 merks a-year of addition to the school-"master's allowance does constitute a trust to increase the income "of the teacher of the parish (now the public) school of said "parish, and falls accordingly within the operation of the said Act; "and further finds, accordingly, that so much of the income or "revenue of the property or money vested in the defenders as "trustees of Bishop Burnet's will as is now or may hereafter be "found to be applicable to the fulfilment of the said appointment, "in the course of the due administration of the charity, with "reference to the whole objects and purposes thereof, must, in "terms of the Education (Scotland) Act, 1872, be accounted for "and paid by the defenders, as it accrues, to the pursuers, as the "school board of the parish of Salton, to be applied and admin-"istered by them according to the trust attaching thereto, in terms "of and according to the provisions of the said Act."

occupied an independent position, and that the school board had to do with financial concerns only, said: "If there be one "thing clear in this important Act of Parliament, it is that "the school boards are entrusted with a general right and duty "of administration over the whole of the educational machin- "ery provided by the statute. . . . Schoolmasters gener- "ally are simply the servants of the ratepayers, represented "by the school board, and are necessarily subject to the ad- "ministration of those for whom they act and by whom they "are appointed and paid. We might interfere in cases which "were fraudulent or oppressive." His lordship concurred in thinking that, under Sect. 55, the old teacher's interest in the fees was reserved entire; and he was perhaps *entitled to collect* them, if he chose. "The school board are certainly not bound to "collect them for him free of charge, his right being to the "amount of these fees, *minus* the trouble or cost of collection." Lords Neaves, Ardmillan, Ormidale, and Mure also concurred. Lord Ardmillan pointed out that "collection" meant merely the receiving of fees according to use and wont from children, or parents, at the school. Lord Ormidale observed that the Court gave no judgment on the question whether Buchanan was bound to keep a register and accounts of fees, and to add to the fees certain small charges for heating the school during the winter months—duties which had also been required of him by the school board. Lord Deas *dissented.* "The policy of the statute was that, "beyond receiving his emoluments from the board, the school- "master should in future have nothing to do with money matters "at all—that he should devote his time and attention exclusively "to teaching." Sect. 53 excluded the supposition that it was the right or duty of any teacher to collect and pay over fees otherwise than by the authority of the board and with his own consent; and Sect. 55 did not create any exception to this rule in the case of "old teachers." His lordship could not see how Buchanan was to be prejudiced in his emoluments by having the fees collected for him in place of collecting them for himself.

Livingstone *v.* New Byth School Board. June 18, 1877. Sheriff-Substitute of Aberdeen.

Livingstone was appointed teacher "during the pleasure of the "board, at a salary of £80, with fees, dwelling-house, and garden." After dismissal, he sued the board for arrears of fees from February 1875 to March 1877. In July 1875 he had given notice that the fees were in arrear. He now pleaded that the board were bound to collect arrears or to pay an equivalent. It was held by Sheriff-Substitute Comrie Thomson that the right to the fees had been assigned by the board to Livingstone, and that the latter was therefore entitled to recover the fees from the parents by legal proceedings. According to the Tulliallan case, the board were certainly not bound to collect the fees free of charge. His right was to the amount of fees, *minus* the trouble or cost of collection.

As the board had not intimated to Livingstone that he might use their name in recovering the fees, the Sheriff gave no expenses to either party.

In this case it was held by Sheriff-Substitute Hill that, in terms of Sect. 53, school fees are to be paid to the treasurer, and not to the teacher. The Sheriff-Substitute observed that it never was the duty of a schoolmaster to collect fees from house to house; it was his right to receive them; and it was now the duty of the treasurer to receive them. On appeal, Sheriff Fordyce expressed his concurrence in this opinion, but held that the point was unnecessary for the disposal of the case.

Blair *v.* Dingwall School Board. June 7, 1874. Sheriff of Ross.

This was an action brought by an "old teacher" against the school board for school fees for the years 1873-74. By minute of the school board in 1873 his right to the fees was reserved, and he was authorised to uplift them and hand them to the treasurer, who would pay him the full amount; but this he refused to do. It was held by Sheriff-Substitute Taylor that the Act did not lay the duty of collection on the treasurer, nor on the teacher, unless authorised by the school board, but that the school board might competently commit this duty to the teacher, who was not entitled to decline it. Apart from agreement, the board might require the teacher to do what was his duty before the passing of the Act. On appeal, this judgment was reversed by Sheriff Fordyce, who held that it was the intention of the Act that the treasurer should collect the fees.

Macintyre *v.* Kincardine School Board. Feb. 26, 1875. Sheriff of Ross.

Where fees not payable in advance, payments should be proportioned to the number of attendances. The teacher is not entitled to fix the rate of fees or to regulate terms of admission.

In this case the teacher of the parish school, without the authority of the school board, issued "fee-lines" and circulars, which stated that children were entered by the quarter only, and that "no reduction would be made for irregular attendances or continued absence except in cases of sickness." Two children were, in the middle of the quarter, transferred by their parent to the burgh school. The school board sued the parent for the whole quarter's fees. It was held by Sheriff-Substitute Milne that, *where fees were not payable in advance*, payment should be proportioned to instruction measured by number of attendances at school. If it was intended to be otherwise, it should be made unmistakably clear in the terms of admission. The words of the circular applied to children on the roll of the school as pupils, and not to children transferred during the quarter to another school. It was admitted that, where pupils were *entered* during the quarter, only the pro-

Selkirk Parish School Board *v.* M'Dougall. March 8, 1877. Sheriff-Substitute of Selkirk.

portion of fees due from the date of entrance was exacted. The Sheriff observed that, in fixing the fees and regulating the terms of admission, the teacher had gone beyond his authority, and that a scale of fees or terms of admission, fixed without the authority of the school board, could not be given effect to in a court of law.

Neither poverty nor deficiency of school-accommodation is a relevant defence to an action against a parent for fees.

Kirknewton School Board *v.* Arbuckle, &c. May 1875. Sheriff-Substitute of Edinburgh.

In these small-debt actions for fees, Sheriff-Substitute Hamilton held that neither poverty nor want of sufficient school-accommodation was a sufficient answer to such an action. The parent pleading poverty was in receipt of 18s. a-week, and had been refused payment of school fees, under Sect. 69, by the parochial board. A similar decision, on the plea of poverty, was pronounced by Sheriff-Substitute Lamond in the case of Oakley (14th Oct. 1876). [Cf. Education Act, 1878, Sect. 22.]

A School Board may make fees payable quarterly in advance.

Lawrencekirk Case. Jan. 1875. Sheriff-Substitute of Aberdeen.

In this small-debt action, for prepayment of a quarter's fees, the parent pleaded that quarterly prepayment had not been customary in the district, and offered to pay a week's fees in advance. Sheriff-Substitute Comrie Thomson held that it was within the power of a school board to make the fees payable in advance for a quarter.

Kilbirnie Case. Feb. 20, 1875. Opinion of Counsel.

It was the opinion of Lord Advocate Gordon and Solicitor-General Watson that it was within the power of every school board, according to their discretion, not only to fix the amount of school fees, but also to determine the time and place of payment; and that prepayment of fees was a lawful and reasonable condition to impose upon the attendance of children.

A School Board may add to fees a charge for heating, which was in use prior to the Act of 1872.

Logierait Case. April 25, 1874. Sheriff-Substitute of Perth.

In this small-debt action, for coal-money, the parent pleaded that the school board were only entitled to charge *fees* for attendance, and not to make additional charges for heating and cleaning. Sheriff-Substitute Barclay held that, as coal-money had always been paid prior to the Act, the school board was now entitled to charge it. As to a charge for cleaning, he reserved his opinion.

V.—TEACHERS.

Sections 54-61, 76, 77, 78.

Teachers' Houses. Sect. 54.

Where the house of an "old teacher" is destroyed, the School Board are not bound to rebuild, but may pay a money equivalent.

An "old teacher," whose house was consumed by fire, sued the school board for declarator that they were bound either to rebuild the house with the insurance money they had received, or to provide similar accommodation by a payment of £34 *per annum*, which the pursuer had been paying for similar accommodation. It was held by Lord Curriehill, and acquiesced in, that the board were not bound to rebuild; but they were bound to pay the £34 actually expended, and for the future £30 *per annum*, which was ascertained by remit to be the rent at Ardrossan for as commodious a house as the old teacher's house.

Marshall v. Ardrossan School Board. March 17, 1877. Lord Curriehill.

The School Board are not bound to remove structural defects in the house of an old teacher, and they are sole judges of the manner and extent of repairs.

A teacher, appointed in 1867, brought an action against the school board for a judicial inspection of his house, which was in disrepair. The board consented to certain ordinary repairs, which were executed at a cost of £64; but it was reported to the sheriff by an architect, that in order to make the house dry and comfortable, the walls would require to be ripped out and repointed. This the board refused to do. It was held by Sheriff Guthrie Smith that the matter was one within the discretion of the school board. The sheriff observed that the question was, How far he was entitled to control the board in carrying out their obligations under Sect. 54. It was obvious, the word "maintained" in this Sect. did not mean reparation of original structural defects, which were the real cause of complaint in the present case. The teacher is to have his house kept up for him, as good as it was at the date of the Act, but not any better. The intention is, that the premises shall be kept in decent repair, but as to the manner and extent of repairs from time to time, a very wide discretion must be left to the school board. Their proceedings were reviewable only in the Court of Session, where, if a board wilfully refused to do its duty, a remedy of the nature of *mandamus* might be obtained. But here there was an honest desire to do everything that could reasonably be required. It would be a very serious thing for the

Clark v. Strichen School Board. April 1877. Sheriff of Aberdeen.

ratepayers of Scotland, if every difference of opinion about the opening of a drain, or the painting of a dining-room, or the erection of a chimney-can could be made the subject of litigation in the sheriff court.

Circumstances in which held the School Board had no right of passage through "old teacher's" garden.

Ardersier School Board *v.* Gray. July 30, 1877. Sheriff-Substitute of Inverness.

The school board claimed a right of passage to school for the children over a portion of the ground designed as the teacher's garden, which Gray, an "old teacher," had left unfenced down to September 1872, but which he then fenced so as to exclude the children. It was held by Sheriff-Substitute Blair that the right of passage was precarious or determinable at the will of the teacher; and that, if the school board desired to take a portion of the teacher's garden, they must offer compensation for it. [According to Sect. 8 of 43 Geo. III. c. 54, the schoolmaster's garden was to be enclosed with a fence of the kind usual in the district.]

An "old teacher" is not bound, at least without compensation, to remove erections which he has lawfully made in his garden.

Latheron School Board *v.* Mackay. July 28, 1877. Sheriff of Caithness, Orkney, and Shetland.

Mackay, appointed teacher in 1861, had erected a barn, a byre, and a piggery on part of the ground provided by the heritors as a garden. These he used in connection with a farm. In 1876 the school board resumed part of the garden as a playground, and, being desirous of enlarging the school and teacher's house, they required Mackay to remove his barn, &c., which he declined to do without compensation. In an action by the school board to have Mackay ordained to remove these erections, it was held by Sheriff Thoms that the school board had failed to prove that Mackay had made these erections in an illegal or unwarrantable manner, or that their statutory rights in the ground were interfered with by Mackay's refusal to remove. The Sheriff observed that, under Sect. 23 of the Education Act, the school board acquired a title to the school ground just as it existed in their predecessors, the heritors of the parish.

Teachers in Office. Sect. 55.

School Boards are not entitled, by the appointment of a rector, to interfere with the social status and the prospective emoluments of the classical teacher in a higher class school.

Elgin Case. Sept. 16, 1873.

In 1859 the Magistrates and Town Council of Elgin appointed A. B. to the office of classical master in the Elgin Academy, of which they were patrons. The appointment was expressed to be for three years, renewable for a similar period by mutual consent,

and terminable on three months' notice by either party. The other two masters in the Academy (for mathematics and English) were appointed in similar terms; and this had been from time immemorial the practice of the patrons. [Cf. Assistant Commissioners on Education in Scotland, III. Report, 1868, p. 26.] The Academy consisted of the ancient Grammar and Sang Schools, united in 1790. In 1863, an English master was appointed rector, without protest by the teachers; but the arrangement did not succeed, and was discontinued in 1865. In 1873 the school board, having obtained a private report on the school, proposed to appoint a rector, to introduce new branches of instruction, and to guarantee to the existing teachers their emoluments, calculated on an average of the preceding five years. The rector was to arrange the classes, to teach the highest classes, and to take a general superintendence. To this proposal A. B. objected, on the ground that, according to use and wont in the burgh schools of Scotland, the classical master is head-master, and that the proposal therefore affected his rights, secured under the Act. It was the opinion of Solicitor-General Rutherfurd Clark and Mr Watson, advocate (1), that A. B. held his appointment *ad vitam aut culpam;* (2) that, it being the policy of Sect. 55 to maintain unchanged the *status*, privileges, and emoluments of existing teachers, the appointment of a rector, as proposed by the school board, would be an invasion of A. B.'s legal rights, "because it would not only affect his present social position as "head-master of the classical department of the school, but would "also deprive him of any possible future increase of income arising "from a larger attendance of scholars." [This opinion seems to be inconsistent with the case *Hunter* v. *Kelso School Board*, March 5, 1875. The counsel consulted by the Assistant Commissioners on Education, in expressing their opinion that the appointment of a burgh schoolmaster was one *ad vitam aut culpam*, observe that some special agreements might be lawful—*e.g.*, if the authorities wished to afford instruction in some branch of education which had not been before taught, they might legally stipulate that the master should hold his appointment conditionally on the success of the experiment.—Report, *ut supra*, p. 225.] Opinion of Counsel.

The School Board are entitled to alter the subjects taught, and to reduce the rate of fees, subject to the teacher's claim of compensation under Sect. 55.

The parish school of Kelso consisted of a grammar school, in which the rector taught the higher branches for certain higher fees, and an English school, in which an assistant gave elementary education. Hunter, a rector appointed before the passing of the Act, agreed, in consideration of the fees, to superintend the English school, to teach there one hour a-day, and to provide an efficient assistant. The school board resolved that all the scholars should Hunter v. Kelso School Board. March 5, 1875. First Division.

be taught the ordinary subjects of the Scotch Code in one school of six classes, the three highest to be taught by the rector, who should give only one hour a-day to the higher branches, for which the fees were reduced. Hunter raised an action to set aside this resolution as illegal, or for declarator that he was entitled to the emoluments he enjoyed at the passing of the Act, and for compensation or damages. The school board pleaded that they had acted under the provisions of the statute. Lord Young assoilzied the school board. His lordship observed, that it had *not* been argued that the union of the schools and lowering of fees were illegal under the statute, but merely that they were in violation of Hunter's rights as an old teacher. The management of a school by a board of managers was a simple and familiar notion, and everything which it comprehended was by the Act devolved upon the school board. This management was not subject to any supervision or control. The powers and duties of Government inspectors and the Board of Education stood on special enactments, and were confined to special matters, and it was the scheme of the statute that the Government took no concern in the management of the schools. With regard, therefore, to everything involved in the notion of school-management, the school boards were supreme and responsible only to their constituents. Of course they would not be permitted to transgress the law of the land, or to violate the legal rights of others. Here the resolution complained of was within the discretionary power of the school board, and could not be reviewed by the board. The change in the method of conducting the school, or in the branches taught, was not an alteration of Hunter's "tenure of office" in the sense of Sect. 55, which meant simply the time during which office was held by law contract or usage. It was implied in the appointment of every parish teacher, that he should submit to the lawful management of the managers, and it was doubtful whether an express contract whereby the managers bound themselves to make no change, however expedient or necessary, would be lawful or binding. Nor was there any contract with Hunter not to change the fees. The board were entitled under Sect. 53 to fix the fees, and no exception to this power was introduced in favour of "old teachers" by Sect. 55. No right belonging to Hunter, therefore, had been violated. He would be secured in his emoluments out of either the school fund or the school rate. Against this judgment Hunter reclaimed to the First Division of the Court, who unanimously adhered to Lord Young's judgment, reserving to Hunter any claim he might afterwards establish in respect of diminished emoluments. [Sect. 16 of 43 Geo. III. c. 54, seems to imply an unlimited power in the heritors and minister of selecting the "branches of literature most necessary and important for the parish." The point was also considered in the case of a burgh school erected by Royal Charter into an academy, Clark *v.* Directors of Irvine Academy, 9 Sh. 97.]

Where the teacher, formerly paid by fees, had voluntarily employed an assistant, and the School Board had enlarged the school and the staff of teachers, *held* that the teacher was secured in the sum paid by him to an assistant; and that, in present circumstances, he was still entitled to the whole fees received; but the Court will not define the *future* rights of teachers under Sect. 55.

Fraser v. Carluke School Board. June 14, 1877. First Division.

At the passing of the Act, Fraser was parish schoolmaster, with a salary of £70 and the school-fees, subject to the obligation of paying a salary of £30 to a female assistant, and also of keeping the school clean. Being also registrar of the parish, he voluntarily employed a male assistant at a salary of £40. The school board, in fixing Fraser's remuneration, maintained that his salary was exhausted by payment of assistants, and that, therefore, his emoluments consisted merely of the school-fees. They accordingly offered him, as remuneration, the average amount of fees at the passing of the Act without salary. Fraser then raised action for declarator that he was entitled under Sect. 55 to £40 salary (the obligation to pay the female assistant having now passed to the school board) and to the whole fees now earned by the school. It appeared that the school board had built a new and much more commodious school, and had provided a larger staff of teachers. It was held by Lord Rutherfurd Clark (1) that Fraser was entitled to £40 salary as emolument, because the employment of a male assistant was a voluntary act and not a necessary condition of his ability to earn the fees; (2) that in the present condition of the school he was also entitled to the whole fees. His lordship observed, that it did not appear that the attendance of pupils had materially increased since the passing of the Act, or that such increase as there might be would not have taken place if things had remained as before. In ascertaining the emoluments enjoyed by Fraser, the *prospects* of the office could not be thrown out of account. He was a very successful teacher, and might naturally have looked forward to increase his emoluments by increasing the number of scholars. The school board, however, might lawfully make changes in the school system; and his lordship refused to make any decree fixing the teachers' rights in the future. Against this judgment the school board reclaimed to the First Division of the Court, who unanimously adhered to Lord Rutherfurd Clark's judgment.

A teacher formerly paid by fees is not secured in the amount of fees received in the year when the Act passed, but in the amount of fees actually received in future years.

Blair v. Dingwall

Blair, who was parochial schoolmaster of Dingwall at the passing of the Act, sued the school board for (1) £35, as half-yearly

School Board. Aug. 31, 1874. Sheriffs of Ross.

proportion of heritor's payment, including salary; (2) £5, half-yearly proportion of M'Lennan Bequest; (3) £17, 15s., one-half of the Government Grant for the current year; (4) £60, one-half the amount of school fees (as agreed to be limited), which he had earned in the year immediately prior to the passing of the Act. The school board did not dispute their liability for Nos. 1, 2, and 3, but they disputed liability for No. 4. It was held by Sheriff Fordyce, affirming the judgment of Sheriff-Substitute Hill, that Blair was entitled in each year to the whole school fees earned by him in that year, but that he was not secured in the amount of fees which he was earning at the passing of the Act. The Sheriff-Substitute observed that Blair was not "prejudiced by the provi-"sions of the Act." He might have been so had the school board reduced the fees without making up the difference. The "emolu-"ment" was the right to the whole fees, not to their actual amount at the passing of the Act.

Where school fees are reduced at once by one-half, the teacher is entitled to compensation.

Alexander v. Loch-gilphead School Board. Sept. 11, 1874. Sheriff-Substitute of Argyle.

Alexander was, at the passing of the Act, parochial schoolmaster at Lochgilphead. The school board reduced by one-half the school-fees formerly payable without fixing Alexander's salary. He then sued the school board for £55 in lieu of fees formerly payable. The school board admitted that school-fees were emoluments secured to "old teachers" by Sect. 55, but pleaded that the amount of the fees was always variable by the managers of the school. They offered Alexander a salary calculated on an average of fees for the last three years before the passing of the Act. It was held by Sheriff-Substitute (Home) that, whether or not a fair reduction of fees by a school board made with reference to the circumstances of a particular school might be competent, so large a reduction of fees as in this case could not be made unless the school board undertook to pay the teacher the difference between the amount received under the new table and that received under the old. [Prior to the passing of the Act the right to fix the rate of fees was vested in the heritors.]

A teacher who undertakes to collect fees is bound, when required by School Board, to furnish monthly statements of arrears.

Forgue School Board v. Lippe. Dec. 7, 1875. Sheriff of Aberdeen.

An "old teacher" accepted £120 salary in lieu of his emoluments, and undertook to collect the fees and coal-money, and account for them to the treasurer. The board required him to furnish quarterly statements of attendances, fees paid, and arrears. This work he refused to do, but offered inspection of his school register and accounts (which the treasurer had initialled monthly) at all reasonable and convenient hours. The board petitioned the

sheriff to order him to furnish the statements. Sheriff Comrie Thomson held that this duty was not imposed on the teacher either by the statute or by the agreement, and that the board ought to employ their clerk to make up such states. On appeal, this judgment was reversed by Sheriff Guthrie Smith, who found that, under the agreement, the teacher was bound to keep an account in the form issued by the Board of Education on 2d July 1873, and ordered him to furnish to the treasurer an account giving a monthly statement of parties in arrear. The Sheriff observed that the meaning of the agreement was that the teacher should keep such an account as the treasurer would have found it necessary to keep had he collected the fees. Here the teacher entered nothing but the gross sums paid—neither the number of children nor the different rates of fees, nor the monthly arrears. The teacher, although his rights and privileges were preserved by the Act, must submit to the reasonable directions of the board.

The appointment of an assistant does not diminish the right of the teacher to the amount of the fees.

Jamieson, an "old teacher," was paid by salary £35, the fees, and Government Grant. The school board divided the school into two rooms (in one of which an assistant taught), and disputed Jamieson's right to the fees paid by children taught by the assistant. After some procedure in Court the school board abandoned this contention, and accepted Jamieson's offer to teach at £80 salary and one-half of the Government Grant.

Jamieson v. Gargunnock School Board. April 22, 1876.

An old teacher has no right to appoint an assistant or substitute.

Buchanan, an "old teacher," appointed as his assistant, Bryce, a certificated teacher. On the application of the school board, Lord Ormidale granted interdict against Bryce entering on his duties at the school. The plea stated by the school board was that, under Sect. 55, read with the interpretation clause, the right to appoint assistant teachers was vested in them.

Tulliallan School Board v. Buchanan and Bryce, Sept. 1874. Lord Ormidale.

Where a teacher, prior to the passing of the Act, had been in use to appoint a substitute to teach while he was himself attending a college session of divinity classes (but without communicating this arrangement for the approval of the heritors), it was the opinion of Dean of Faculty Rutherfurd Clark that the delegation of duties being illegal, the teacher was not entitled, after the Act, to continue the appointment of a substitute on similar occasions, and that the desertion of office amounted to a culpable neglect of duty, which, in respect of the resulting inefficiency, &c., would justify proceedings under Sect. 60 (2).

Dervaig Case. Jan. 18, 1875. Opinion of Counsel.

[As to right of burgh school teacher to sell educational books to his pupils, see *Guildry of Stirling* v. *Weir*, Nov. 27, 1823, 2 Sh. 531.]

New Teachers. Sect. 55.

In appointing a servant who is not a teacher, the School Board must specify the duration of service.

Muir *v.* Ardrossan School Board. Nov. 1875. Sheriff-Substitute of Ayr.

This was an action for a quarter's salary by a school-cleaner who was engaged by the school board at £3 salary for a year, and continued, without objection, to do the work for a fortnight of the second year, and was then dismissed without fault on her part. The school board pleaded that, under Sect. 55, they could not enter into an engagement for a fixed period. Sheriff-Substitute Anderson held that the original contract and the tacit relocation were both proved. The sheriff observed that it was at common law impossible for a school board to enter into a contract of service without specifying the period of time for which the service was to last, and the school board must therefore be entitled to specify a term of service. If boards had power to dismiss teachers without notice, teachers must also have power to leave without notice. The words "during the pleasure of the board" were intended to facilitate the removal of inefficient teachers. [It will be observed that a school-cleaner does not form part of the educational staff of a "school" in the sense of the interpretation clause.]

Where a School Board resolved to fix the teacher's salary at £125 *per annum; held* this was a binding contract for one year.

Macfarlane *v.* Mochrum School Board. May 27, 1875. Second Division.

A school board resolved "to fix the teacher's salary at £125 "*per annum.*" This was accepted by the teacher who was in office at the passing of the Act. A dispute then occurred about the collection of fees, the teacher offering to let the clerk examine his register, but declining to make a copy-list for the school board. The school board now resolved that the teacher's salary should be £50, and the school fees as before the passing of the Act. In an action by the teacher, for salary at the rate of £125, it was *held* by the Second Division of the Court, affirming the judgment of Lord Young, that the first resolution was a binding contract for one year from its date, and that there was no breach of implied contract by the teacher entitling the board to rescind.

A teacher appointed under Sect. 55 is entitled to three months' notice of dismissal or to compensation.

Morrison *v.* Abernethy School Board. July 3, 1876.

The school board of the parish of Abernethy appointed Morrison public school teacher at a salary of £150, with house and garden. He taught the school for a year, and till within a fortnight of the end of the first quarter of the second year. He was then, *ex facie* in terms of Sect. 55, dismissed without previous notice, and with payment of salary for the current

quarter. He then sued the school board in the Sheriff Court of Perth, for £50 damages in respect of wrongous dismissal, or for a quarter's salary and emoluments as compensation. He pleaded that, by tacit relocation, he had become teacher for a second year; and, apart from that, he was entitled to reasonable notice of dismissal, or compensation. The school board pleaded that, in terms of Sect. 55, Morrison's appointment was "during their pleasure," and that he was liable to be dismissed without notice. Sheriff-Substitute Barclay, considering the nature of the office and the occupancy of house and garden, sustained the plea of tacit relocation. On appeal, Sheriff Adam recalled this judgment, and assoilzied the school board, on the ground that the appointment was during the pleasure of the school board. Morrison appealed to the Second Division of the Court, who, according to the opinion of a majority of seven judges (Lords Neaves and Ormidale dissenting), decided that, though Morrison's appointment was at the pleasure of the school board, he was entitled to reasonable notice, or to compensation for the want of notice. The Court thought three months' notice was reasonable, and gave Morrison £50. Lord Deas pointed out that, the tenure *ad vitam aut culpam* having been abolished, teachers of public schools were no longer public officers, and the question was one of ordinary contract between master and servant. It did not follow, however, that the school board could not hire for a certain term, or with conditions as to renewal and notice. Here there was a contract for no fixed period: it must be held to have been made in accordance with Sect. 55, and was therefore terminable at pleasure. Such a contract implied, at common law, a right to notice or compensation in lieu of notice. This was also implied in contracts for fixed periods, the object in both cases being to give time to find another service. This rule was of peculiar expediency in the case of teachers. If the school board had recognised the principle that compensation was due, the Court would have been slow to interfere with their discretion as to amount. Lords Ardmillan, Mure, Gifford, and Lord Justice-Clerk (Moncreiff), concurred with Lord Deas; Lord Gifford observing that Sect. 55 imperatively directed that every appointment of a teacher should be at the pleasure of the school board: no other appointment would be legal. Lord Neaves agreed with Lord Gifford, that a school board could not appoint for a fixed period, but held that there was no common law right to notice. The customary warning of servants was for the protection of the poorer classes, and did not extend to the higher appointments. Lord Ormidale agreed with Lord Neaves, and pointed out that notice was required under contracts for fixed periods, in order to prevent tacit relocation, but was inapplicable to contracts terminable at pleasure. There might, of course, be wrongous dismissal under such contracts, if it was effected by conspiracy or accompanied by false and malicious statements.

Stirling Case. April 22, 1876. Opinion of Counsel.

It was the opinion of Solicitor-General Watson that female teachers under the Act of 1861 might be engaged for any period on any terms; that, in the absence of express contract, the presumption was in favour, not of life appointment, but of termly or yearly appointment; and that the school board might therefore dismiss such teachers with notice.

Where a teacher, entitled to Parliamentary Grant, leaves between quarters, he is entitled to a proportion of the Grant corresponding to the gross attendances.

Wilson *v.* School Board of Straiton. March 27, 1877. Sheriff-Substitute of Ayr.

Wilson was appointed teacher at Straiton in 1873, with house, salary £65, fees, and Government grant. He left on 13th August 1875 for Crossmichael. The board deducted the Government grant from his quarter's salary, on the ground that he gave insufficient notice of leaving, and that, a new teacher not being got for some time, the school had suffered. It was held by Sheriff-Substitute Paterson that, as the board had accepted Wilson's resignation, they could not raise any question of notice, and that Wilson was entitled to a proportion of the Government grant for the period of his service, *calculated according to the gross attendances.* The sheriff also *held* that as Wilson's wife had acted as sewing mistress at Straiton, for six months, with the knowledge of the board, and as no agreement that she should act without salary was proved, Wilson was entitled to £5 as a reasonable allowance on this head.

Where a teacher occupies his house as a yearly tenant, he is entitled to the franchise as tenant and occupant.

M'Gregor *v.* Caldwell. Oct. 22, 1873. Registration Appeal Court.

The teacher of a burgh school had for many years been enrolled as a voter as tenant and occupant of a dwelling-house which he occupied as tenant from year to year under the Magistrates and Town Council. On the passing of the Education Act, the school board reappointed the teacher "during the pleasure of the board," at a certain salary, "besides the dwelling-house, as at present "occupied by him," and entered into a negotiation with the Magistrates and Town Council for a transfer of the dwelling-house. It was *held* by the Registration Appeal Court that, the dwelling-house not having been transferred to the school board, the title of the teacher to the house was not defeasible. Lord Ardmillan added, that he wished to guard against the supposition that the title would necessarily have been defeasible if the dwelling-house had been transferred. The case was not one of a tenant whose qualification was liable to be destroyed at the caprice or pleasure of an individual landlord. The teacher was, by provision of public law, placed in a position from which he might be dismissed by the school board, an official body, whose power of dismissal would not be exercised capriciously. The teacher's position resembled that of a dissenting minister.

A teacher appointed during the pleasure of the Board, with the use of a house, is not entitled to the franchise.

Hally v. Kilgour. Nov. 5, 1877. Registration Appeal Court.

In 1875 the school board of Kincardine appointed Kilgour teacher of the public school, "during the pleasure of the school "board," at a salary of £55, with a proportion of school-fees and Government grant. The minute bore that "it was also understood "that Mr Kilgour would occupy the teacher's house as soon as "Mr Nicholson would leave." The teacher's house and garden were entered in the Valuation Roll as of the annual value of £15. Kilgour, having personally occupied them for a year prior to 1st July 1877, claimed to be enrolled in the register of voters for the county of Perth as tenant and occupant of the subjects. Sheriff Lee rejected the claim. On a case stated by the Sheriff, it was unanimously held by the Registration Appeal Court (Lords Ormidale, Mure, and Craighill) that the tenancy was a defeasible one, and that the rejection of the claim was therefore right. Lord Ormidale observed that Kilgour was employed by the school board under a contract of service, terminable at pleasure without any cause assigned. The presumption was that he held his house and garden (which were really part of his remuneration) only while he remained the servant of the board, and on the same conditions as those on which he held his post of teacher. A separate arrangement might perhaps have been made with regard to the house, but his Lordship doubted whether such an arrangement existed anywhere, and also whether, if it existed, it was lawful. In this case, however, there was no trace of a special arrangement. It had been said that a school board would not capriciously dismiss their teacher, and would dismiss him only for a serious cause; and it was argued that, as in the case of clergymen of the Established Church, and of some dissenting churches with similar constitutions, there was a fixed tenure of office which amounted practically to a tenure *ad vitam aut culpam*. In the case of *Robbie* v. *Meiklejohn* (7 M'Ph. 296), however, which had been referred to, and on which he desired to reserve his opinion, Lord Ardmillan had assumed, as the basis of the judgment of the Court, that the clergyman was really a liferenter. Then, in *Brown* v. *Paterson*, 4 Rettie, 5, the case of a private schoolmaster, it was admitted that, if the tenancy of the house depended on the tenure of the office, the claim was bad; but there was evidence in the case of a special and separate contract of tenancy. Lord Mure concurred, pointing out that formerly schoolmasters were enrolled as liferenters by virtue of their office, but now they were simply tenants-at-will. Lord Craighill concurred. It was decided in *Stewart* v. *Grant*, 7 M'Ph. 311, that a holograph letter, authorising the claimant to remain in possession of the property, was a sufficient title; but in *Darnley* v. *Stewart*, 7 M'Ph. 313, it was held that the claim to the franchise depended on the character of the right

as excluding the proprietor, and not on the duration or character of the possession actually had. [Cf. Education (Scotland) Act, 1878, sect. 24.]

This case was held to rule that of *Mitchell* v. *M'Nicoll*, in which the facts were the same, except that, under his contract with the school board, the teacher was entitled to two months' notice.

Munro and Hodge. Oct. 2, 1877. Sheriff of Midlothian.

The school boards of Penicuik and Duddingston appointed Hugh Munro and John Hodge to be teachers of their public schools respectively, "during the pleasure of the board." Both claimed to be enrolled in the register of voters as tenants of the teacher's houses occupied by them. The claims were rejected by Sheriff Davidson, who said that it was quite clear, from the terms of the claimant's appointment, that he was not a tenant. Munro paid no rent; and he could not, therefore, be registered as a tenant. If he was removable at any time from his office as schoolmaster, he would remove at the same time from the house which, as schoolmaster, he occupied. Therefore his claim as a tenant failed altogether. It was in the character of liferenters that schoolmasters were formerly put upon the roll, in the same way as ministers were enrolled. The schoolmasters, who, like the ministers, held their office *ad vitam aut culpam*, could be removed only for *culpa*, and that after going through a regular form or process of trial, often a very difficult one; and it had been held that *culpa* could not be presumed of any schoolmaster, and that, therefore, as long as he held his office *ad culpam*, he must be taken to hold it *ad vitam*. Now the Act of 1872 drew a distinction between those schoolmasters appointed before, and those appointed after the passing of the Act; and the claimant here was a schoolmaster appointed after the passing of the Act. What, then, was his position? So far as the Sheriff could read them, no words could be more distinct than those employed in the Act—that every appointment by a school board of a new teacher should be "during the pleasure" of the board. The Sheriff took it that if this appointment had been made by an individual or a company, and in these terms, there could be no question whatever that the person holding such an appointment and dwelling-house would not be entitled to be enrolled as a liferenter. But every person to be enrolled must be either a tenant or a liferenter. But here another ground of claim existed. In the two cases of Macgregor and Wardrop, Lord Ardmillan seemed to think that there should be a distinction drawn between a schoolmaster and any other man who held an appointment on such tenure. The Sheriff was unable to draw any distinction between an appointment, whether made by a private individual, or a public company, or a school board, in regard to the question whether a person who held his appointment at pleasure was entitled to be registered. Lord Ardmillan said a schoolmaster's appointment was not to be supposed to be defeasible at the caprice of

the school board, because they were not likely to act capriciously. But the question was not whether they were likely to act capriciously. The question was—Had they the right to do so? and was there any power of control over them in the event of their so acting? Now the Act put their powers in the strongest possible words—the appointment was to be "at the pleasure" of the board; and that pleasure might be a most unreasonable one. The board might at any moment, and as they saw fit, abolish a school and dispossess a schoolmaster,—a thing which was not competent before this Act was passed. He could not be guided in his interpretation of the Act by any feeling that so respectable a body of men as the schoolmasters of the country ought to be entitled to a vote. He could not judge upon the question of propriety; the question for decision was—Did the Act of Parliament give them the right? He was of opinion that it did not. [Cf. Education (Scotland) Act, 1878, sect. 24.]

A teacher appointed under the Act of 1872, Sect. 55, with the use of a house and garden worth £5 a-year, is entitled, in virtue of Sect. 24 of the Education Act, 1878, to be enrolled as liferent proprietor.

Murray v. Morton, Nov. 9, 1878. Registration Appeal Court.

In 1875 the school board of Glasserton appointed Morton teacher of the public school, in terms of Sect. 55 of the Act of 1872, with salary of £60, school-fees, Government grant, and a house and garden, entered in the Valuation Roll at the annual value of £8. The board paid all rates and taxes, except road money, which was paid by Morton as occupant. Morton claimed to be enrolled in the register of voters for the county of Wigtown "as liferent proprietor, or proprietor *ex officio* of house and gar-"den." Sheriff Rhind admitted the claim. On a case stated by the Sheriff, it was held by a majority of the Registration Appeal Court (Lord Ormidale dissenting), that in virtue of Sect. 24 of the Education Act, 1878, the claim was properly admitted. It was argued for the claimant that the object of this section was to remove the political disqualification created by Sect. 55 of the principal Act, and to restore all teachers to the position, as regards the franchise, which they occupied prior to 1872. It was argued for the objector that Sect. 24 was obviously intended to remove the objection to the claim of teachers as tenants and occupants, which had been sustained in the case of *Hally* v. *Kilgour*. It was pointed out that no "new" teachers had claimed as "liferent "proprietors" between 1872 and 1878. Lord Ormidale observed that the claimant's occupancy was admitted to be part of his emoluments—he was said to be proprietor only because he was teacher; but it would be unusual if a permanent right to emoluments were given to a teacher liable to be dismissed at a moment's notice. Neither Sect. 5 of the Reform Act of 1868, nor Sects. 7

and 8 of the Reform Act of 1832, contemplated the enrolment of schoolmasters without heritable estate. Formerly the heritors were bound to provide a house and garden, but school boards were under no such obligation, still less to dispone a house to the teacher in liferent. That would probably amount to an illegal application of the rates. If the contention of the claimant were sound, it would apply to every pupil-teacher who got house accommodation from the board. The section quoted from the Act of 1878 applied to tenants and occupants, and was passed to remove the objections of defeasibility given effect to in the cases of *Kilgour* and *M'Nicoll*. In the case of *Wardrop* v. *Cockburn*, he had considered the tenure of the side schoolmaster as dependent on that of the parochial schoolmaster. Lords Craighill and Mure observed that Sect. 24 of the Act of 1878 made no distinction between the case of proprietor and the case of tenant and occupant. It must apply to both cases or neither. Lord Craighill further referred to Sects. 22, 23, 25, 36, 37, 38, and 55 of the principal Act, and contended that, if a teacher appointed *simpliciter* to his office got a house and garden, he must be considered, for registration purposes, as holding them *ad vitam aut culpam*.

Procedure under Sect. 60 (1).

Macintyre *v.* Kincardine School Board. Feb. 3, 1874. Bill Chamber.

The Sheriff's sentence on a complaint under Sect. 60 (1) was held by Lord Shand to be not subject to review, except on the ground of some fundamental nullity.

Procedure under Sect. 60 (2).

Averments on which the Court refused to interfere with the removal of a teacher as "unfit and inefficient."

Whyte *v.* Haddington School Board. July 9 1874. First Division.

In 1873, the school board of the burgh of Haddington, in terms of Sect. 60 (2), removed the rector of the burgh academy as "unfit "and inefficient." There had been no scholars in the school since 1870. In a suspension of a warrant of ejectment from the teacher's house, the rector pleaded that his appointment was *ad vitam aut culpam*, and that incapacity, immorality, or malversation, were the only grounds on which he could be removed. He endeavoured to account for the state of the school by its unhealthy position, by the organisation of a private school, by wrongful interference of the magistrates in the management as regards methods of discipline and religious instruction. It was unanimously held by the First Division of the Court, affirming the judgment of Lord Young, that there was no ground for interfering with the removal. Lord Ardmillan observes: "Looking to the cases of *Mags. of* "*Montrose* v. *Strachan*, January 18, 1710, M. 13,118; *Hastie* "v. *Campbell*, June 29, 1769, M. 13,132; and *Kempt* v. *Mags.* "*of Irvine*, M. 13,136, and to the recent statutory provisions for "education, I am of opinion that the entire and continued absence

" of pupils from a school, the teacher of which alleges his capacity " to teach, justifies the resolution of the school board, regularly " formed and issued, and confirmed by the Board of Education."

A claim for retiring allowance by the teacher of a side school is not excluded by the facts that he was not examined by the Presbytery, did not sign the Confession of Faith, and did not contribute to the Schoolmasters' Widows' Fund.

Robb *v.* Logiealmond School Board. Nov. 18, 1874. Lord Young.

At a meeting in 1858, attended by the minister of the parish of Monzie and the factor for the leading heritor, Robb was appointed teacher of a side school at Logiealmond. While there he also acted as Inspector of Poor, Collector of Poor Rates, Parish Registrar, and Session-Clerk; but he was not examined by the Presbytery or examiners, and did not sign the Confession of Faith or formula of the Church, or take the necessary oaths and declarations, or contribute to the Schoolmasters' Widows' Fund. In an action for retiring allowance in terms of Sect. 60 (2), brought by Robb against the school board, it was pleaded by the school board that as Robb had not been legally appointed to the office of parochial schoolmaster, and had not complied with the statutory requisites for holding that office, he was not entitled to sue. Lord Young repelled these pleas. [But in *Rae* v. *Pyper*, July 2, 1831, 9 Sh. 866, it was held on the Widows Fund Act, 47 Geo. III. c. 85, that the date of the judgment of Presbytery was the date of appointment. The schoolmaster might be deposed for failure to subscribe the formula, *Murray*, Dec. 5, 1834, 13 Sh. 128, and might be subjected to examination at the expiry of 27 years, *Mathewson*, July 8, 1830, 8 Sh. 1029, and *M'Alpine*, January 25, 1840, 2 D. 481. But see *Ross* v. *Findlater*, March 2, 1826, 4 Sh. 514.]

The right to a retiring allowance conferred by the Schoolmasters' Act 1861, Sect. 19, is extended by Sect. 60 (2) to every case of dismissal without fault. A school board should state reasons for dismissing a teacher without allowance.

Robb *v.* Logiealmond School Board. Feb. 5, 1875. First Division.

The school board of the parish of Logiealmond, in terms of Sect. 60 (2), removed, as inefficient, Robb, who was a teacher of a side school at the passing of the Act. Robb then sued the school board for retiring allowance, alleging that his removal was not occasioned by his fault, but was due to other causes for which he was not responsible. The action was laid on the concluding proviso of Sect. 60 (2) and Sect. 19 of the Schoolmasters' Act, 1861, 24 & 25 Vict. c. 107, which provides that where any schoolmaster of any parish is disqualified because of infirmity or old age for the due performance of his duties, or where, from negligence or

inattention, he has failed efficiently to discharge such duties, he may be permitted or required to resign, or, if he refuse to resign, may be dismissed; and in every case of resignation, a retiring allowance may be granted, provided that wherever the resignation shall not be occasioned by fault of the schoolmaster, a retiring allowance of a certain amount shall be granted. The school board pleaded that Robb was removed in respect of inefficiency caused by his fault. Lord Young assoilzied the school board without taking evidence on the question of fault. His Lordship held that Robb had no right to retiring allowance. The Act of 1861 did not permit the removal of an incompetent, unfit, or inefficient teacher, unless his incompetency, unfitness, or inefficiency was attributable to the natural disqualification "of infirmity or old "age" or to "negligence or inattention." The Act of 1872 permits removal if the teacher is "incompetent, unfit, or inefficient," no matter from what cause; and it preserves the rights to retiring allowances conferred by the Act of 1861 as therein provided. But this Act conferred such rights only where a resignation, provided for by the Act, was *not* occasioned by fault—*i.e.*, where the teacher was disqualified through "infirmity or old age." Here Robb did not aver any cause of removal which might have led to resignation or dismissal under the Act of 1861, much less a cause of removal which would have entitled to a retiring allowance under that Act. The result is that, where a teacher appointed prior to the Act of 1872, is subsequently removed as disqualified through infirmity (without fault) or "old age" he is entitled to retiring allowance, but in no other case. Robb reclaimed against this judgment to the First Division of the Court, who unanimously held that if Robb was not in fault he was entitled to retiring allowance, and allowed him to explain on record the causes of the small attendance at his school. Lord President Inglis agreed with Lord Young that the right to retiring allowance under the Act of 1861 was confined to the case of disqualification through infirmity or old age, though there might be some kind of inattention which did not infer fault, and yet did not come up to infirmity. But he thought that the principle of the Act of 1861—viz., that retiring allowance is to be granted as matter of right where there has been no fault, was imported into the Act of 1872, and applied in terms to all the cases under it. There might unquestionably be cases where the teacher was, in the judgment of the school board, unfit for his post, when his unfitness arose neither from old age or infirmity nor from fault of his own. "The teacher may be dismissed if inefficient, whether "from his own fault or not. If there is fault, he is entitled to "no retiring allowance. If there is no fault, he is entitled to one." Lord Deas concurred, adding: "When a school board intend that "a schoolmaster should not have a retiring allowance, they ought "to frame their deliverance so as to show that he was dismissed "for fault; at all events, when a schoolmaster asserts his right

"to a retiring allowance, the school board ought to pronounce a "distinct deliverance, affirming fault if they disallow his claim." Robb then put on record a statement that the small attendance at his school was due to the decreasing population and the large number of more conveniently situated schools in the locality, and also to sectarian rivalry and political feeling. The Court then remitted to the school board to reconsider their refusal to grant a retiring allowance. The school board adhered to their refusal, and stated in obedience to the order of Court that Robb's inefficiency was due to extreme indolence, culpable neglect of his duties as teacher, and general misconduct, as proved by the complete absence of scholars and substantiated by the evidence of the inhabitants of the district. In view of this statement, the Court held that Robb had not averred any sufficient explanation of the desertion of his school, and they gave final judgment, unanimously adhering to the original judgment of Lord Young. The Court refused to give expenses to the school board on the ground that "when a school "board refuse a retiring allowance they should state their rea- "sons."

The Court will not review the decision of the school board and Board of Education on the question of "fault."

Morison *v.* Glenshiel School Board. May 28, 1875. Second Division.

The school board of the Parish of Glenshiel, in terms of Sect. 60 (2), dismissed Morison, who was teacher of the parish school at the passing of the Act, as "unfit by his conduct and inefficient "from his own fault." Morison then sued the school board for retiring allowance under Sect. 60 (2) and Sect. 19 of the Schoolmasters' Act, 1861, 24 & 25 Vict. c. 107. He averred that the inspector's report, on which the dismissal proceeded, was not made in terms of Sect. 60 (2), the inspector not having visited the school for the purpose of making it; he denied that he was unfit or inefficient, or that he was so through his own fault. The school board averred that the bad condition of the school was caused by the fault of Morison, in particular by neglect and want of attention in the discharge of his duties, and by his intemperate habits. Lord Young assoilzied the school board. In the course of his opinion, his lordship observed: "In deciding the case of *Robb* v. *School Board of Logiealmond*, I assumed that the management of the school (in the ordinary sense of the term 'management') was by the Act committed to the school board, with the power and duty of seeing to its continuing efficiency as an educational establishment, and of removing the teacher if, in their judgment, the school should at any time fall into a state of inefficiency by reason of his unfitness. It was not suggested in argument, nor did it occur to myself as a reasonable or even possible view of the Act, that the school board were only managers to the effect of seeing that the material and mechanical appliances of educa-

tion were provided with due economy to the ratepayers, and had so little concern with education itself that they were not at liberty, without the teacher's leave, to visit the school for the purpose of satisfying themselves that it was efficiently conducted, but only to see that the building in which the children were taught was sufficiently commodious and kept in decent repair. In the view that the members of the school board were chosen by the constituency, not from any confidence in their ability to manage the schools as educational establishments, and to take care that they should be efficiently taught and conducted, but only as likely persons to see to the condition and repair of the school buildings and furniture, I should have had some difficulty in dealing with the case of the removal of a teacher by such a board, because *they considered* him 'incompetent, unfit, or inefficient.' The language of Section 60 might have been found too strong to admit of the removal with all its consequences being resisted, but it would have been impossible not to feel that the Legislature had unfortunately and quite inexplicably committed an important and delicate duty to a body which, as being chosen for a very different kind of duty, were presumably unfit to discharge it, and were even denied the most obvious and apparently essential means of enabling themselves to perform it with such intelligence as they might accidentally possess. In such a case a court of law would at least regard the proceedings with considerable distrust, and, attaching no importance or weight to the opinion of so incompetent a body, would be disposed to strain the construction of the statute in order to compensate the dismissed teacher with a pension.

"The leading principle and feature of the Act of 1872 is, that the direction and management of the public schools supported by local rates and government grant is thereby committed to the people themselves, to be exercised by means of school boards elected, as the Act directs, in the several districts into which, for the purposes of education, the country is divided. I venture to lay it down as a true proposition that the *whole* management of every public school existing, or which may exist, under the Act is committed to the school board of the district in which it is situated. The management is certainly not divided; and therefore, if it were true, which I think it is not, that anything which school management involves is withheld from the school boards, it is certain that to this extent the schools are left without management altogether, for no power of management is given to any other bodies or persons. With respect to the parish and burgh schools, which constitute a considerable though ever-decreasing proportion of the public schools under the Act, the whole powers and duties of their former managers—viz., the heritors, ministers, and town-councils, are transferred to the boards, while all power of interference by church courts is taken away. The power and duty not only of providing suitable buildings and furniture, but of appointing

and removing teachers, is expressly conferred and imposed on the boards. It has been suggested that there is significance in the circumstance that the visiting powers of presbyteries are not transferred to the boards. But as these (whatever they were) are not transferred at all, but simply abolished, the only significance is that any connection between the Established Church and the schools is severed, which cannot, I should think, signify that the schools are not to be visited by their managers.

"The whole powers and duties respecting the material appliances and the personal staff of every school established under the Act in any district being thus conferred and imposed on the school board of that district, it was perhaps superfluous to provide, as Sect. 36 does in express terms, that 'the school board of every parish and burgh shall maintain and keep efficient every school under their management,' for this would probably have been implied. One purpose of the provision was to guard against the possibility of a school board which had, under Sect. 28, been compelled to establish a school which they thought unnecessary, thereafter, when an opportunity occurred, practically discontinuing it, by simply omitting to do what was necessary to maintain it in a state of efficiency, as by omitting to appoint a teacher when a vacancy occurred, or continuing an inefficient teacher who drew no scholars, which would, of course, be as efficacious for the discontinuance of the school, contrary to the opinion of the Board of Education, as allowing the school buildings to go into disrepair. If it was necessary to make express provision against the practical discontinuance by the school boards of any schools instituted or taken over under the Act, this is the only clause which does so, and it will probably be generally thought that the provision was a prudent one. I am aware that it has been suggested that the clause relates only to the school buildings and furniture, and that a school board will well perform its duty to 'maintain and keep efficient any school,' by keeping the school-house with its furniture in good repair, although it is not resorted to by a single child, whether because there is no teacher at all, or because the teacher is so 'incompetent, unfit, or inefficient' that no prudent parent will, and no parent ought to be required to, intrust a child to his tuition. With reference to this suggestion, I will only observe that it is not in accordance with my notion of maintaining and keeping a school in a state of efficiency by a board which is intrusted with the power, and charged with the duty of appointing efficient teachers and removing such as they shall 'consider' to be inefficient. I should certainly be greatly surprised if, on a complaint by the Lord Advocate, under Sect. 36 of the Act, this Court should acquit a school board which had really discontinued a school by neglecting to provide and maintain a proper educational establishment therein, because the schoolhouse, although disused and empty, was commodious and in decent repair. It is,

indeed, abundantly clear that the words 'maintain and keep efficient' in the first branch of the clause are opposed to the word 'discontinue' in the second; and that as allowing the school buildings to go to ruin is not the only way of discontinuing a school, so keeping these in repair is not the only thing requisite in order to maintain the school in a state of efficiency.

"But if school boards be responsible, as I think they clearly are, for maintaining and keeping the schools 'under their management' in a state of efficiency, it is obviously necessary that they shall have the power not only of appointing, but also of removing, the teachers, and so the provisions of the Act which confer this power appear to be in harmony with the principle of the measure. It is clear that they have the choice of the teachers, for whose fitness and competency they are responsible, and, being equally responsible for the conduct and continuing efficiency of every teacher whom they employ, they have also the power of removal. Nor need the power surprise any one, for not only had Parliament conferred the same power on the school boards of England only two years before, but it is a power which, so far as I know, is possessed and exercised by every body of school managers in the civilised world. It is true that, by a rule of which I believe there is no example elsewhere in any case at all similar, the parish schoolmasters of Scotland held their places for life. That this was an inconvenient and inexpedient rule appeared (so at least Parliament thought) not only from the experience we had of its operation, but from the conduct of mankind, proceeding on experience, in every department of life and business. Parliament accordingly determined that there was no reason why the school boards of Scotland should employ their teachers upon any other footing than those of England, or why such contracts as all school managers, including those of the great foundation schools of the country, and, indeed, the managers of all undertakings whatever, found the most expedient with their employés, should not also be esteemed the most expedient for the Scotch school boards and their teachers. They are, accordingly, required by the Act to contract with teachers exactly as all others who require the services of teachers contract with them. In the public interest there is a certain qualification prescribed, to be testified by certificate. This is analogous to the qualification prescribed by law for shipmasters, medical practitioners, and many others who seek employment in their several callings.

"But it is according to the practice of Parliament to make reasonable provision for the protection of existing interests, and accordingly clause 60 was introduced into the Act. The object of it, as is plain, I think, from the language, was to modify with respect to teachers appointed before the Act, to such extent as was deemed necessary for their reasonable protection, the power of removal, which in all other cases was conferred absolutely on the

school boards. It would have been against the public interest, and contrary to the policy of the Act, to exempt them from the control of the boards who were made responsible for their efficiency. But, on the other hand, it was considered proper, in deference to the principle of reasonable protection to existing interests, that the action of the boards, with a view to their removal for inefficiency, should be subjected to certain specified checks. Accordingly, while the school board of every parish or burgh is empowered officially to 'consider' whether 'any such teacher is incompetent, unfit, or inefficient,' a board which considers that he is so, must, before proceeding to remove him, require a special report 'regarding the school and the teacher' from H.M. Inspector, and furnish the teacher with a copy of it. This is the first check. The second and only other is, 'that a judgment removing the teacher shall not have effect until confirmed by the Board of Education.' It is, I think, not amiss that I should mention, with reference to some views which have been expressed regarding the functions of inspectors, that it was not without hesitation and difficulty that the department of the Government charged with the administration of the Parliamentary grant, whose servants H.M.'s Inspectors are, consented to allow this duty to be put on these officers, it being contrary to the rule and practice of the department to interfere, or permit their inspectors to interfere, with the management of any school, or to interpose in any way between the managers of a school and their teachers. But the case was considered to be exceptional and temporary, and so the clause was allowed to pass as matter of public convenience.

"But, attaching all due importance to the checks, it must nevertheless be acknowledged that the duty imposed on the school board is of a very onerous kind, and that respect is justly due to their judgment. They are responsible for the efficiency of the school, although taught by a teacher appointed before the Act, and may be made answerable (upon a complaint to this Court) if they allow it to fall into a state of inefficiency, although its inefficient condition is attributable to the unfitness or incompetency of the teacher. Their opinion, or, as the Act expresses it, what they, as managers of the school, 'consider' regarding the efficiency of the teacher, is the primary condition of any action under the Act. If their judgment be favourable to the teacher, there is no power elsewhere to remove him, although they may no doubt be compelled to take action by proceedings against themselves, under Sect. 36 of the Act. They are thus put to form their judgment under the responsibility of a grave duty, for the due discharge of which they are answerable, not only to their constituents, but to the law. With the opinion which I have expressed, I cannot hold that they are unfit for the duty which Parliament has put on them, or that they are without the means of acquiring the knowledge necessary to enable them to perform it intelligently. I cannot hold that the

teacher is entitled to set them at defiance, and to exclude them from the school, unless they come to see to the repair of the building or the condition of the desks and forms. I must hold, on the contrary, that the managers of a school, responsible for its efficiency (as all managers presumably are, and as these managers expressly are), are entitled to visit it, and that, acting on the ordinary prompting of the human understanding, they will do so before condemning the teacher as 'incompetent, unfit, or inefficient.' I have already pointed out that the school board must themselves judge in the first instance, although their first judgment (if condemnatory of the teacher) is provisional, and need take no more formal shape than a requisition for a special report by one of H.M. Inspectors. It is not, however, too much to say that reasonable men will not form such a judgment and act upon it, even to the extent of calling for a special report from the inspector (in itself a serious and significant step), without grave deliberation on the subject, after taking all due means of informing themselves regarding the school and the teacher.

"When, therefore, the school board in this case required a special report from the inspector, I must assume that they had previously, after due deliberation, and in the intelligent and honest discharge of their statutory duty, come to the conclusion that the pursuer was 'incompetent, unfit, or inefficient.' These expressions are almost indistinguishable in meaning, and really only aid each other exegetically. On resuming consideration of the case with the inspector's report, they had 'no hesitation in coming to the conclusion, on the strength of this report, and from the knowledge of the majority of the members of the school board of the circumstances of the case, that the teacher is unfit by his conduct, and inefficient from his own fault, and that in justice to the inhabitants of the parish he should be removed from the office of teacher,' and they pronounced judgment removing him accordingly. Nothing remained but the application of the second statutory check, and it was applied, with the result that the judgment was confirmed by the Board of Education.

"In condescendence 3 the pursuer declines to admit the regularity of the proceedings; but the only criticism which he makes seems to me to be unfounded, and no conclusion or plea is put upon alleged irregularity. The action assumes regular and effectual dismissal under the Act, and concludes for a retiring allowance on the ground alleged in condescendence 4, that the pursuer 'denies, and it is not the fact, that there has been any incompetency, unfitness, or inefficiency on his part which is or has been due to his fault.' The pursuer makes no other averment, but calls on the defenders 'to specify in what particulars the pursuer has been guilty of fault in the discharge of his duties'—a call which the defenders, disputing the pursuer's right to make it, answer by alleging intemperate habits, neglect, and frequent absences from his duties.

The "question thus raised for decision seems to be whether a teacher who has been removed under clause 60 (subsection 2) of the Act has a good action for a retiring allowance on a general denial that the unfitness, &c., for which he was removed was due to his fault; and I am of opinion that he has not.

"It is obvious that the trial of such an issue would be most perplexing, although, were such trial necessary to vindicate a right clearly conferred by statute, the difficulty would no doubt have to be encountered. The general rule is, that the proof of fault is on the party alleging it, and perhaps the pursuer's case may be put most strongly on the call which he makes on the defenders for a specification of the fault they allege, and undertake to prove, for the purpose of resisting his claim. But it would, in my opinion, be contrary to the meaning and intention of the Act to require the defenders to establish, by evidence in this Court, the grounds on which they proceeded in the discharge of their statutory duty. The managers of a school, if they are to do their duty fearlessly, must often proceed on their observation of results during a considerable period, and their judgment of the teacher's responsibility for them. Their conclusion of fault on his part may be just, and such as they are bound in duty to act upon, without the possibility on their part of establishing it by evidence in a court of law. They are themselves the best judges, and have the best opportunities of judging. It is to them, accordingly, that the statute commits the duty of judging, so far at least as regards removal; and they are assuredly not tied to proceed only on such evidence as a court of law requires. Then, does the Act provide that they must pay a retiring allowance unless they prove fault in a court of law? I think it does not.

"The Act of 1872 (clause 60, subsection 2) gives no larger power to school boards to grant, and no larger rights to teachers to demand, pensions than were conferred on heritors and schoolmasters respectively by the Act of 1861 (Sect. 19). This is clear, for the later Act refers to the prior for the measure of the powers and rights which it gives. The prior Act authorised the heritors to remove and give pensions to teachers who were 'disqualified because of infirmity or old age for the due performance of the duties' of their office, but it authorised removal *with a pension* in no other case whatever. Removal *without pension* was authorised in the case of a teacher who, 'from negligence or inattention, has failed efficiently to discharge such duties.' The defenders say that the pursuer 'is unfit by his conduct and inefficient from his own fault;' and this is on the face of their judgment, which the Board of Education affirmed. The pursuer denies 'fault;' but as he does not allege 'infirmity or old age,' I fail to see how he can have right to a pension. Had he been removed under the Act of 1861, it must have been for 'negligence or inattention,' for he is not old or infirm, and it seems clear that the heritors could not have

granted him a pension. But if this be so, the school board which removed him under the Act of 1872 have no power to grant him a pension, for the power of the heritors under the one Act is the measure of the board's power under the other.

"In refusing to allow the pursuer a proof of his negative averment of no fault, or to require the defenders to prove the faults which, in answer to his call, they have averred in general terms, I proceed on what I conceive to be the law applicable to all cases of removal under this clause of the Act, and it concerns the community that the law should be settled. I think it would be contrary to the intention of the Act, and detrimental to the public interest, to put a school board which has dismissed a teacher in the same position as a defender in an action for slander, by requiring them to condescend upon and prove the *veritas* of the grounds on which they proceeded. The members of the board may be morally certain that the teacher is inefficient, intemperate, negligent, and frequently absent from duty, leading to the utter destruction of the school, without being able to establish much of it (except, perhaps, the condition of the school) on a trial in a court of law. It is not for the interest of the community that they should be deterred from dismissing the teacher if they, the Inspector and Board of Education, all concur in thinking that the interests of education require it, by the apprehension of a litigation with a dismissed teacher, in which they may be required to satisfy this Court also of the propriety of that step. The question may only regard a pension, but a pension means a higher school-rate in the parish, and I am not disposed to countenance the notion that there must either be proof of delinquency in a court of law, or a pension and an increased rate. This was not, I think, the intention of the Act, and so to construe it would be calculated to deter school boards from the due discharge of their duty. No public department, no business or domestic establishment, could be efficiently conducted on the condition that those in charge, and having the responsibility, should not dismiss an employé unless prepared to set forth and establish his misconduct at law. Even in private establishments good men require no such protection against the caprice of employers, and school boards are public bodies which ought to be regarded, and I trust ever will be regarded, by this Court with a confidence in their integrity and discretion corresponding to that which Parliament has manifested by the large and important duties committed to them. Teachers who are disabled by infirmity or old age are proper objects of compassion, and the Legislature has made fair provision for them accordingly. But to allow a young and vigorous man who (after applying all the statutory checks in his favour) has been properly dismissed for unfitness and inefficiency, to call the school board into Court, and insist that they shall there either make and prove charges of misconduct against him, or submit to judgment for a pension, is what I for

one do not find consistent with the provisions of the statute or the interests of the public.

"It was conceded that the Court has no power to review the judgment of removal on its merits, or at all, the regularity not being questioned; and I think the Court owes it the respect due to any final judgment or determination by the proper statutory authority. Nor do I think that it is to be regarded by the Court only in the abstract as a judgment under Sect. 60 of the Act, without looking to the import and plain substance of it as a judgment in the particular case. So looked at, it is a judgment of removal for unfitness by misconduct and inefficiency from fault. The pursuer says that it is erroneous in fact, and he reflects on the motives of his judges, or some of them, and thus (but only thus) represents his removal as without fault on his part. I think this is not relevant, for the judgment of removal is final, and not examinable on its merits in this Court.

"If a teacher who is not disqualified by age or infirmity may be well removed under Sect. 60 without fault on his part, it must be for a cause which is not only satisfactory to the school board, but approved by the Board of Education as good reason for the removal which they confirm. I am unable to conjecture (within the bounds of reason and likelihood) such a cause; and the possibility of its occurrence may, I think, be prudently left for determination till an actual removal shall occur for a cause having such an aspect. I do not admit that a school board may (as has been supposed by way of illustration) direct new subjects to be taught in an old parish school which the schoolmaster is excusably unable to teach, or task him in any way beyond his reasonable powers, and then remove him for unfitness. Such a removal, on the report of the inspector, and confirmed by the Board of Education, is, I think, beyond the region of reasonable supposition, and a speculative consideration of it is at least foreign to the case which the pursuer presents; for he, being on the face of the judgment removed for unfitness and inefficiency, which the school board and Board of Education concur in attributing to his misconduct and fault, does not allege a cause of removal which involved no fault on his part, but only that the cause assigned by the proper authority was not true in fact, and that he was thus unjustly removed without any cause at all. It was not maintained that a judgment of removal for unfitness and inefficiency from misconduct and fault ought to specify the facts in which the misconduct and fault consist, or that it would be less assailable in such an action as the present if it did. I think the generality of expression is preferable, and do not suppose for a moment that the school board and Board of Education adopted the general terms without particular grounds established to their satisfaction in the individual case. Looking to the judgment on the one hand, and to the case stated by the pursuer on this record on the other, it seems to me impossible to represent the latter as con-

sistent with the former, or otherwise than as a direct contradiction of it. I am myself of opinion that the Act of 1872 sanctioned a retiring allowance only in the case of infirm or aged teachers, to which case it was admittedly confined by the Act of 1861, which is referred to as the measure of the power and right which the latter Act confers. I also think that this does not result from any rigid or strict construction of the words of the Act of 1872, but accords with the intention and plain reason of the Act, for no other case of legitimate or reasonably supposable removal under the Act without fault on the part of the teacher has been suggested or occurs to my mind; and the notion that the Legislature intended to confer a power and create a right conditioned on the opinion of a court of law on the question of fault or no fault on the part of the removed teacher, upon a general inquiry into the whole circumstances and merits of the removal, is one which I cannot adopt. It has been said that the Act of 1872 extends, with respect to old teachers, the power of removal without fault on their part. I do not think so, for I think it only further (and reasonably and beneficially) extends and facilitates the power of removal for fault. But if it be reasonably supposable that a teacher who is neither infirm nor old may nevertheless be properly removed under the Act of 1872 after observing all the checks provided for his protection, without fault on his part, it is not too much to require that a party appealing to this Court in reliance on so special a case should condescend on the particular facts which raise it. And these facts must consist with the notion of a just dismissal without fault on the part of the teacher; for that is the condition of relevancy in this view of the matter. But the pursuer condescends on no facts whatever. He only impugns the justice of his removal, and upon that, as the only *medium*, claims a retiring allowance. His case is, that on a true construction of clause 60 he is entitled to be compensated by a retiring allowance on satisfying the Court that the judgment of removal (which, as such, the Court is precluded from reviewing) was an unjust judgment, which ought not to have been pronounced.

"To sustain the relevancy of such a case would, in my opinion, be, not to put a liberal construction on a remedial statute, but to put an erroneous construction on a statute which is remedial in no other sense than every statute is remedial. The managers of the old parish schools (viz., the valued-rent heritors who supported them) could always practically get quit of an unfit and inefficient schoolmaster by giving him a retiring allowance. The evil of the law was, that they could not get quit of him except on that condition—the practical result being that teachers who really ought to be removed were retained to the detriment of education, rather than burden the rates with a pension to a man who had no just or reasonable claim to it. This evil was partially remedied by the Act of 1861, and more completely by that of 1872—both Acts

providing (the latter by simple reference to the former) for a retiring allowance to aged and infirm teachers, and no others."

Against this judgment, Morison reclaimed to the Second Division of the Court, who unanimously adhered to Lord Young's judgment. The Court held—(1) that the statement made by the school board as to fault was sufficiently specific; (2) that the Court was not entitled to review the judgment of the school board and Board of Education on the subject of fault. The Court, however, reserved their opinion on the question whether an "old teacher," dismissed without fault, but not on the ground of "infirmity or old age," has a right to retiring allowance under the Acts of 1861 and 1872. Lord Gifford explained that in Little *v.* Whitburn School Board, June 16, 1874, he had no opportunity of considering the question whether proof was competent, and felt great doubts of its competency. [This case has accordingly not been reported. For decisions on *culpa* of teachers at common law, see 'Duncan's Parochial Ecclesiastical Law,' pp. 816-828.]

The school board are not bound to pass a resolution requiring a report, but the report must state whether the teacher is efficient or not. Allegations of malice are irrelevant against a school board acting under the statute. Are allegations of oppression also irrelevant?

Macfarlane v. Mochrum School Board. Nov. 9, 1875. First Division.

Macfarlane, who was parish schoolmaster of Mochrum at the passing of the Act, was dismissed by the school board, *ex facie* in terms of Sect. 60 (2). He then raised an action against the school board and the Board of Education to set aside the resolution of the former removing him, and the minute of the latter confirming it, and for declarator that he was still teacher, and entitled to the emoluments of the Mochrum public school. He averred that, before requiring a report, the school board had come to no resolution that the teacher was unfit; that the inspector's report, on which the removal proceeded, was a report on the school, not on the teacher; that the school board, being maliciously disposed towards him in consequence of disputes about salary and collection of fees, applied for a report at a time when, as they knew, from a variety of causes (*e.g.*, epidemic illness among scholars, change of fees, of vacation, and of subjects, &c.), it was impossible for the inspector to ascertain the average condition of the school; and that the school board, in sending him a copy of the report, did not send a copy of a resolution referred to in it, so that he might defend himself. The minute of the Board of Education must fall with the resolution of the school board. He had no opportunity of defending himself before the Board of Education. The school board and the Board of Education pleaded that the action was incompetent, because the resolution and minute respectively were not subject to review by the Court. Lord Curriehill repelled these preliminary

pleas, and allowed the action to proceed. His Lordship thought the pursuer had stated a relevant case of deviation from the statute, and also of malice and oppression. Against this judgment the Board of Education reclaimed to the First Division of the Court, who unanimously adhered to Lord Curriehill's judgment. Lord President (Inglis) observed that, as the school board was vested with a jurisdiction more administrative than judicial, which belonged to no Court in the kingdom, its resolution was as much final as the sentence of a sheriff under Sect. 60 (1). But if either school board or Board of Education did not observe the conditions on which the statute authorised them to exercise their powers, their proceedings were liable, not to review, but to be set aside as incompetent. It made no difference that the Board of Education was practically a department of Government. As regards the alleged deviations from statute, the school board were not bound, before requiring a report, to pass a resolution that the teacher was unfit. But the objection to the report was very serious. It represented the school as in a very unfavourable condition, but said nothing about the teacher. The report must deal with the teacher; it must be such as to justify the school board in proceeding to remove him. The allegation of malice, however, was wholly irrelevant; it would not invalidate an act of public duty. Whether or not a case of oppression could be made out against a public board, in the execution of a statutory duty, his lordship reserved his opinion; but here the only relevant averment was deviation from statute in the matter of the report. Lords Deas, Ardmillan, and Mure concurred, Lord Mure observing that, in the cases of *Brown* v. *Heritors of Kilbery* (15th Nov. 1825), and *Ross* v. *Findlater* (2d March 1826), 4 Sh. 174 and 514, and 3 Wil. and Sh. 441, the Court had, in the same way, examined into the regularity of the proceedings of presbyteries, under the Act of 1803. [See also *Heritors of Corstorphine* v. *Ramsay*, *F.C.*, 10th March 1812.]

Averments which were held not to disclose a case of oppression against a school board. *Opinion* that averments of oppression are irrelevant. *Objections* to inspector's report.

Marshall *v.* Ardrossan School Board and Board of Education. Dec. 6, 1877. Lord Curriehill.

This was an action of reduction, brought by an "old teacher," of the resolution of the school board dismissing him for fault, and of the minute of the Board of Education approving of the same. Among many other objections to the procedure, Marshall alleged that the report upon his school was invalid, because not made by an inspector charged with the duty of reporting on that school, and because founded on an improper method of examination, the children themselves not having been taught by Marshall in presence of the inspector, and a wrong classification of the children

having been adopted. Lord Curriehill observed that, so far as he knew, Her Majesty never appointed one particular person to inspect a particular school: the report was properly given by the inspector, who, on the application of the school board, received instructions from the Scotch Education Department. The inspector had received explanations from the teacher, and must be allowed to select the mode of examination he thought most suitable. Besides averments of malice on the part of the school board, which, on the authority of *Macfarlane* v. *Mochrum School Board*, were held to be irrelevant, Marshall also alleged various acts of oppression by the school board, such as failure to provide sufficient school accommodation and appliances, with the result of compelling the children to go to other schools, unfounded statements made to the inspector, &c. Notwithstanding the *obiter dicta* of the Judges in the cases of Glenshiel, Logiealmond, and Mochrum, Lord Curriehill expressed an opinion that where a resolution of the school board had been confirmed by the Board of Education, and the whole statutory procedure was *ex facie* regular, averments even of oppression were irrelevant. The teacher was protected from oppression by the Board of Education, and to allow an inquiry into matters of oppression would weaken that board, and prove an encouragement to litigation. But his Lordship further held that, assuming inquiry to be allowed in such a case, there were no relevant averments of oppression. The pursuer said that the schoolhouse was dilapidated; that he had been required to collect fees and make returns; that before the inspection which resulted in his removal the school board obtained three inspections which did not result in his removal; that, in consequence of statements made by the school board, the pursuer's certificate was suspended, and his school ceased to earn a grant; and that the school board then removed the children to a grant-earning school. He also said that the Board of Education had made no inquiry before confirming the resolution to remove. Lord Curriehill thought that these facts did not disclose a case of oppression, and also that, as the Board of Education had received a full statement of his case from the pursuer, they were not chargeable with oppression.

Deliberate contumacy does not constitute a ground of removal under Sect. 60 (2).

St Fergus Case. Dec. 1875. Opinion of Counsel.

Where a teacher, otherwise perfectly efficient, unreasonably refused to fill up Form IX. and Examination Schedule, unless he got a greater interest in the grant; and unreasonably refused to give the proper amount of instruction to a pupil-teacher, because he considered £5 insufficient payment for such instruction [such refusals involving nonpayment of grant and suspension of certificate, and therefore ultimately disqualification under Sect. 56]; and also fixed the school holidays without communication with the school board,

who had consulted him in the matter,—it was the opinion of Lord Advocate Gordon and Solicitor-General Watson that such deliberate contumacy did not constitute "incompetence, unfitness, or inefficiency," so as to justify proceedings under Sect. 60 (2). The Board of Education accordingly refused to confirm a resolution of the school board in terms of Sect. 60 (2). [The hours of teaching and length of vacation were matters specially committed to the presbytery by Sect. 20 of 43 Geo. III. c. 54.]

A resolution of dismissal need not specify fault or decide the question of retiring allowance. A school board may enforce a resolution of dismissal, although they have subsequently to its date negotiated with the teacher for his resignation.

Aberdalgie School Board *v.* Doig. Nov. 29, 1877. Sheriff of Perth.

An old teacher was dismissed in terms of Sect. 60 (2), as incompetent, unfit, and inefficient, the confirmation by the Board of Education being expressed "so far as regards the removal from "office of the defender." Negotiations for a resignation followed during two or three months, but the school board ultimately adhered to their resolution to dismiss, and, *ex gratia*, gave Doig a retiring allowance of £10 *per annum*. In an action by the school board for ejection of Doig from the school-house, he pleaded that the original resolution had been departed from, and that the resolution to adhere had not been confirmed by the Board of Education. He also pleaded that the school board could not dismiss, nor the Board of Education confirm, without at the same time deciding whether a retiring allowance was to be given, and how much. Both these pleas were repelled by Sheriff Lee (affirming the judgment of Sheriff-Substitute Barclay). As regards the first, the Sheriff-Substitute observed: "If there was a considerable interval "between an act of removal and its enforcement, and a teacher in "the meantime had been kept in office, there might be a presumption that the school board had fallen from the act of removal, "and that it might depend on the teacher's conduct in the interval "whether a renewed dismissal became necessary." The Sheriff observed: "It may admit of doubt whether a school board has any "power to abandon such a resolution after it has been confirmed." As regards the second plea, the Sheriff observed: "It is contended "that, in the case of removal without fault, no power is conferred "on the school board to remove a teacher without providing a retiring allowance; and that, therefore, the resolution of the school "board in this case is defective, either in not specifying fault or in "not granting a retiring allowance. The Sheriff holds that, in all "cases of removal without fault, the teacher's right to a retiring "allowance stands on the proviso of clause 19 of the Act 1861; "and he is of opinion that the question, whether the removal from

"office has or has not been on account of inefficiency without "fault, is a question which depends on the terms of removal. It "appears to be the interest of the school board to declare the re- "moval in such terms as to avoid all questions afterwards. But "the Sheriff is of opinion it is in their power to remove the teacher "without saying anything in their resolutions on the subject of re- "tiring allowance. . . . It may be said to be absolutely necessary "that where fault is to be alleged as the cause of the teacher's in- "efficiency and consequent removal, this should be disclosed suffi- "ciently to enable the Board of Education to consider the case in "that view. There seems to be nothing in the case of Logiealmond "inconsistent with this contention." There were also in this case averments against the validity of the inspector's report and relative resolution, but it was observed by Sheriff-Substitute Barclay that the provisions of the Sheriff Court Act, 1876, allowing grounds of reduction to be pleaded *ope exceptionis* could not be held to apply to the acts of a public officer.

Marshall v. Ardrossan School Board. Dec. 1878. Seven Judges.

In an action by an old teacher against a school board for retiring allowance in terms of Sect. 19 of the Act of 1861, or alternatively for damages in respect of wrongful refusal to grant such allowance, the teacher averred (1) old age and infirmity; (2) that the inspector's report, though legally warranting dismissal, proceeded on circumstances not inferring fault on the teacher's part, but largely due to the oppressive action of the school board. [See previous case, Marshall *v.* Ardrossan School Board.] The action was dismissed by Lord Craighill as irrelevant, on the authority of Robb *v.* Logiealmond School Board, and Morison *v.* Glenshiel School Board. A reclaiming note to the First Division against this judgment was argued before seven judges, who, before judgment, remitted to the school board to reconsider their resolution refusing an allowance. It is understood that the school board then granted an allowance of two-thirds of the salary enjoyed by the teacher under the Act of 1861. In the action the teacher claimed two-thirds of the salary enjoyed by him under the Act of 1872 at the date of dismissal.

VI.—HIGHER-CLASS SCHOOLS.

Sections 62-64.

Retiring allowances may be paid out of the school funds to the teachers of higher-class schools.

Glasgow High

It was the opinion of Dean of Faculty Rutherfurd Clark, that school boards may, under Sect. 61, grant retiring allowances to the

School Case. Opinion of Counsel.

teachers of higher-class public schools, not by way of burden on the fees, which must in terms of Sect. 62, subsect. 3, be divided and distributed among existing teachers, or on the contributions payable from the common good, which are appropriated by Sect. 46, but out of the school fund, as regards which Sect. 64 does not limit in any way the power of granting retiring allowances conferred by Sect. 61, the "expenses" referred to in Sect. 64 being such as the expense of annual examinations, &c., referred to in Sect. 62, subsect. 6.

A school board may lawfully convert into a preparatory department part of a higher-class school.

Aberdeen Grammar School. July 3, 1875. Opinion of Counsel.

The school building of this higher-class school contains accommodation for 1000 scholars, but the average attendance at the school is only 250. It was proposed by the school board that a large hall (used only for exhibition purposes) and a class-room adjoining should be set apart as a preparatory department for the higher instruction; that the expense of necessary alterations (chiefly new doors and passages), and of providing furniture and teaching apparatus, should come out of the school fund of the burgh, but not the cost of maintenance. It was the opinion of Dean of Faculty Rutherfurd Clark, that the school board might lawfully provide a preparatory department to be conducted as an integral portion of the school, on the understanding that the teachers of the existing higher classes would not be required to teach in it, but that the expense of altering the buildings and of providing furniture and teaching apparatus could not lawfully be charged against the school fund of the burgh.

The expense of alterations and repairs cannot be charged on the school fund.

Edinburgh High School. Mar. 1874. Opinion of Counsel.

The school board altered a lecture-room so as to make it suitable for a science class. It was the opinion of Dean of Faculty Rutherfurd Clark, that neither the expense of this alteration nor the cost of ordinary repairs on the school buildings were lawfully chargeable against the school fund. [Cf. Education (Scotland) Act, 1878, Sects. 18 and 20.]

VII.—MISCELLANEOUS PROVISIONS.

Sections 65-80.

Compulsory Attendance. Sect. 69.

The Parochial Board are the sole judges whether a parent is unable by poverty to pay fees.

Callachan v. Paterson. Sept. 1876. Lord Deas. Circuit Court.

In this case, the teacher of a Roman Catholic school, earning the parliamentary grant, as authorised by the managers of the school, and with the consent of a parent named Mulvany, who had been deserted by her husband, sued the parochial board for the ordinary school-fees of Mulvany's son, aged 9, whom she had placed at the school; which fees Mulvany was unable to pay by reason of poverty. The parochial board pleaded—(1) no title to sue; (2) no employment of pursuer; (3) that they were not satisfied of Mulvany's inability. Sheriff-Substitute Buntine (sitting in the Small Debt Court) repelled pleas 1 and 2, but sustained plea 3, and dismissed the action. The Sheriff said that—(1) as the school was in receipt of parliamentary grant, the instance, authorised by the managers and concurred in by the parent, was good; (2) no express employment of the teacher by the parochial board was necessary to make them liable for the fees; (3) but Sect. 69, which for the first time bound parochial boards to pay fees for children of poor persons, did so only in one event—viz., if the board was satisfied of the parent's inability. If the parochial board refused in any particular case to consider the question of inability, they might at common law be compelled to do so. But their decision under Sect. 69 was final, because the Act provided no machinery of appeal, as the Poor Law Act (Sect. 73) did with reference to the question of relief. This was inconvenient—as, if the school board or the sheriff, under Sect. 70, were to take a different view of the parent's inability, it might result in the child not being educated. Against this judgment the pursuer appealed to the Stirling Circuit Court, where Lord Deas, after hearing counsel, dismissed the appeal. His Lordship said that it was impossible to hold that the statute intended an investigation before the sheriff into the question of inability. If it had been alleged that the parochial board failed to apply their minds to the case, he would have been disposed to think that there was no incompetency in remitting to them to do so. Cf. Education (Scotland) Act, 1878, sect. 22. [*Note.*—By minute, dated Oct. 21, 1876, the Board of Supervision state that parochial boards may legally pay fees under Sect. 69 at any school, whether it earns a parliamentary grant or not. They are not bound by the parents' selection of a school, but they ought to consult the wishes of the

parents. On the question whether in England poor law guardians are bound to pay the fees to the board or to the parent, see the Guardians of Darlington Union, 32 L. T. N. S., p. 320.]

Prosecutions. Sect. 70.

Is inability to pay fees a sufficient defence to prosecution under Section 70?

Glasgow Case. July 1874. Sheriff-Substitute at Glasgow.

In a prosecution under Sect. 70, the parent proved to the sheriff that she was unable from poverty to pay the school fees; but as the parochial board had, on an application under Sect. 69, refused to pay the fees, Sheriff-Substitute Galbraith held that he was bound by their decision on the question of inability, and convicted accordingly.

M'Pherson v. Fowler. Feb. 1878. Sheriff-Substitute at Glasgow.

In this case, where the parent, a widow, was in receipt of parochial relief to the extent of 4s. a week, paid through the city board by the parish of Blantyre, but the city board refused to pay school fees, and reduced the aliment to 2s. a-week, it was held by Sheriff-Substitute Galbraith that the parent had a reasonable excuse for failing to provide education for her child. The Sheriff observed that the finality of the judgment of the parochial board prevented the operation of the compulsory clauses of the Act in cases where the Sheriff might think the parent was too poor to pay fees. He suggested that the school board should judge of this matter, and should receive power to recover fees by taxation or from the parochial board. [Cf. Education (Scotland) Act, 1878, Sect. 22.]

Failure to send young children three or three and a half miles to school is not gross neglect.

That the school board have failed to supply school-accommodation is no defence to a prosecution under Section 70.

Whether, in certain circumstances, gross neglect has been committed, may be stated as a question of law under the Summary Prosecution Appeals Act, 1875.

Campbell and Jameson. Feb. 23, 1876. High Court.

Campbell, a Highland crofter, failed to provide with elementary education his two daughters, aged five and nine years, the nearest school being three and a half miles from his house. He was convicted, by Sheriff-Substitute Barclay, of an offence against Sect. 69, and fined 10s. On appeal to the High Court of Justiciary (Lord Justice-Clerk (Moncreiff), Lord Craighill, and Lord Young), the conviction was set aside with expenses. Lord Young observed: "The compulsory clause is to be applied judi-

"ciously and discreetly, and I should even say, gently and "tenderly. . . . It may be there is room for difference of "opinion as to whether there is neglect in not sending a child of "five years to school at a distance of three and a half miles. I "should hardly have thought so myself. But I cannot imagine "that there should be any difference of opinion as to whether or "not that neglect was gross and without reasonable causes. It is "incumbent on the prosecutor to lay before the magistrate some "evidence, not only of the neglect, but of the quality of the ne-"glect." The other judges concurred.

In this case the defaulting parent pleaded before the Sheriff, *inter alia*, that the school board had failed to provide sufficient accommodation, although required to do so by the Board of Education. His plea was repelled by Sheriff-Substitute Barclay, who observed that he had no power to order the school board to provide accommodation. The plea was not stated on appeal. Campbell and Jameson. Feb. 23, 1876. High Court.

In this case the Court held that the question whether in a certain state of facts a parent had, in the sense of Sect. 70, failed grossly and without reasonable excuse to provide elementary education, was a question of law, which might be stated by case for appeal to the High Court of Justiciary, under the Summary Prosecutions Appeals Act, 1875. Do.

In a prosecution under Sect. 70, it appeared that the defaulting parent's residence was upwards of three miles from the nearest school, and that during the summer he had sent his children (the eldest of whom was a girl aged twelve) to this school. It was held by Sheriff-Substitute that the parent had a reasonable excuse for not sending his children to school in the winter season. It appeared in evidence that none of the children of a particular village attended school during the winter. [Cf. Education (Scotland) Act, 1878, Sect. 7, subsect. (1)]. North Yel Case. April 1876. Sheriff-Substitute of Shetland.

A written certificate by school board is indispensable in every prosecution under Sect. 70.

The evidence of the parent ought to be taken in such prosecutions.

France, being charged before the sheriff with a contravention of Sect. 69, pleaded that, inasmuch as there were three different grounds on which a school board might grant the certificate required for prosecution by Sect. 70, it was the duty of the Procurator-Fiscal to libel on the certificate in the complaint, in order that the accused might know with what he was charged. He also pleaded that he had provided for the education of his son, but that he refused to send him to the public school, because the teacher was charged with adultery in an action of France *v.* Procurator-Fiscal of Inverness. June 29, 1877. High Court.

damages pending in the sheriff court, in which several witnesses had already sworn to the truth of the charge. Sheriff-Substitute (Blair) repelled the objection to the want of the certificate, refused to hear evidence in support of the charge against the teacher, and refused to allow the accused to give evidence on the ground that the proceeding was a criminal one. It appeared that after France had been before the school board and had stated the excuses—that the teacher was unfit, and that his son was sent to a private adventure school (which last, however, he did not attempt to prove before the sheriff)—a committee of the board was appointed to inquire into the excuse, with power to order prosecution; and it was on their report that the default officer gave warning. A minute of the school board resolving to prosecute on default, and a report by the officer certifying default, were transmitted to the Procurator Fiscal. On appeal to the High Court of Justiciary the conviction was set aside, on the ground that a written certificate by the school board is essential to every prosecution under Sect. 70. Lord Young observed, that the prosecution was brought when the child was at the very end of the statutory age, while the Act intended the prosecution to be for the interest of the child's education, not solely for the punishment of the parent. "There is no evidence "of failure, gross or without reasonable cause. It must be kept "in view there is no positive obligation to send any child to "school, or to any particular school. On the other hand, the "school board is bound to bring elementary education within the "reach of the child. The sheriff says the boy has not attended the "public school for upwards of three years, has not been attending "any school for the last three months, and is not now attending "any school. But it is not stated that up to the age of twelve "years and nine months the boy was not attending some school "other than the public school." His Lordship then pointed out the necessity of a written certificate, specifying the material facts, which was intended to call the attention of both the school board and the magistrate to the fact that it was only gross failure without reasonable excuse which would warrant forcible interference with a father in the management. On the question of the admissibility of the parent's evidence, Lord Young said: "I think the magis-"trate as well as the school board ought to listen to the story of "the parent." Lord Craighill concurred, observing that, as a general rule, the certificate ought to be produced with the complaint. He reserved his opinion on the question of evidence. Lord Justice Clerk (Moncreiff) concurred. He also reserved his opinion on the admissibility of the parent's evidence. He thought the proceeding might come under the definition of "criminal" in Sect. 28 of the Summary Procedure Act, 1864. "It would cer-"tainly be very desirable that the parent's evidence should be "taken." [Cf. Form of Certificate, App., p. 458.]

On a motion for expenses, the Court held that, as Sect. 71 pro-

tected the Procurator-Fiscal from expenses in the sheriff court, and as he had acted as a public officer under instructions from the school board, no expenses would be given against him; for he would have to pay them out of his own pocket.—[Cf. Education (Scotland) Act, 1878, Sect. 23.]

In a prosecution under Sect. 70, the child may be examined in Court.

Or a remit made to a teacher.

Or the sheriff may examine the private school at which the child attends.

In a prosecution under Sect. 70, it appeared that the girl in question, aged 13, had to attend to a blind aunt and to earn a livelihood. After examining the girl in Court in reading, writing, and arithmetic, Sheriff-Substitute Rhind held that she had a fair share of elementary education, and that in the circumstances the parent could not be said to have failed "grossly and without "reasonable excuse." Cargill Case. June 21, 1875. Sheriff-Substitute of Wigtown.

In a prosecution under Sect. 70, the parent, an innkeeper, produced his son, whom Sheriff-Substitute Barclay examined personally; and the result being satisfactory, the parent was found not guilty. Mochrum Case. June 1, 1875. Sheriff-Substitute of Perth.

In a prosecution under Sect. 70, the parent pleaded that he had taught his children himself. A remit was made to a schoolmaster, who examined the children, and reported that they were fairly educated. Sheriff-Substitute Barclay then dismissed the complaint, but found the parent liable for the examination fee of £1, as he had failed to appear before the school board when summoned to give explanations in terms of Sect. 70. Jameson *v.* Cameron. Dec. 15, 1876. Sheriff-Substitute of Perth.

In a prosecution under Sect. 70, it was pleaded by the parent that the children were sent to a humble adventure school. The school board stated that they had received a most unsatisfactory report upon this school. Sheriff-Substitute Nicolson examined the school personally, and thereafter found the parent not guilty. Kirkcudbright Case. July 1877.

Home teaching will not generally be accepted as sufficient.

In a prosecution under Sect. 70, Sheriff-Substitute Gillespie, in finding the parent not guilty, observed that, while a parent was not bound to send his children to a school if their education was really attended to at home, he wished to caution parents against expecting that such instruction as could ordinarily be given at home would in general be regarded as a fulfilment of the obligation imposed by Sect. 69. Edzell Case. May 1874. Sheriff-Substitute of Forfar.

After child is brought to school, teacher becomes responsible for education.

Cuthill Case. Dec. 14, 1876. Sheriff-Substitute of Stirling.

In a prosecution under Sect. 70, it was held by Sheriff-Substitute Buntine, that after the child had been brought to the school by the parent, the teacher becomes responsible for the attendance of the child; and that a knowledge of reading, writing, and cipher-ing is sufficient elementary education in the sense of Sect. 70.

The teacher is not entitled to stipulate that the children shall act as monitors.

Bowden Case. May 1875. Sheriff-Substitute of Rox-burgh.

In a prosecution under Sect. 70, the parent pleaded that his daughters, aged 8 and 10, had more than three months previously been turned out of the school, and refused readmission, because they, as instructed by him, refused to act as monitors. There had been some negotiation between the parent and the school board. Sheriff-Substitute Russell found the parent not guilty.

The attendance of half-timers is a sufficient defence to a prosecution under Sect. 70.

Selkirk Case. May 11, 1875. Sheriff-Substitute of Selkirk.

In a prosecution under Sect. 70, the parent pleaded that his children, twins, aged 11, were employed in a manufactory, and that they attended school as half-timers in accordance with the provisions of Sect. 6 of the Factories Acts, 1874, and Sect. 31 of the Factories Act, 1844. The school board led evidence to show that the children would not be able under the half-time system to acquire a fair elementary education before reaching the age of 13. It was held by Sheriff-Substitute Milne, that the refusal of the parent to send his children to school for the full time did not constitute a gross failure or without reasonable excuse. The Sheriff observed, that it might be very desirable that no children should be allowed to attend factories and enjoy the privileges of half-timers except those who had reached a certain degree of proficiency in elementary education, or who were likely to reach it before the age of 13. But neither the Education Act nor the Factories Act, which was a more recent statute, prescribed any such test of proficiency; nor did the Education Act authorise the school board or the magistrate to apply any such test. The Sheriff therefore found the parent not guilty, but added that teachers ought to look very closely after the attendance of half-timers.—[Cf. Education (Scotland) Act, 1878, Sect. 5.]

The Coal Mines Regulation Act, 1872, permitting the employment of children of school age, affords no defence to a prosecution under Sect. 70.

In a prosecution for failure during four months to educate a boy above the age of 12, and below the age of 13, the parent pleaded that, under Sect. 6 of The Coal Mines Regulation Act, 1872, 35 & 36 Vict. c. 76, passed subsequently to the Education Act, boys of that age might be employed in a coal mine for not more than 54 hours a-week, or 10 hours in a-day. For 3 years prior to Feb. 1877 the boy had been at school. At that date he was being prepared for the third standard. It was held by Sheriff-Substitute Orr Paterson, that the Mines Regulation Act did not exempt parents from their obligation to provide a fair elementary education. No certificate under Sect. 73, or other proof of education, had been offered by the parent. As it was stated that it was widely believed among the miners of the district that the Mines Regulation Act had the effect pleaded, the Sheriff imposed only a nominal fine of 1s., with an alternative of six hours imprisonment, intimating that future cases would be dealt with in a different manner.—[Cf. Education (Scotland) Act, 1878, sect. 5; and a similar case on the English Education Act, 1870, and the Workshop Regulation Act, 1860, Bury *v.* Cherryholme, L. R., 1 Ex. Div., 457.]

Procurator Fiscal of Ayrshire *v.* Reid. Feb. 1878. Sheriff-Substitute of Ayr.

Is a parent entitled to insist that his children shall be taught at the Public (late Parish) School, and not at a Female School?

In this case the accused had for about eighteen months failed to provide elementary education for his two daughters, aged 8 and 5. His defence was that he had sent them to the public school of the parish, but they had been refused admittance. The school board explained that, having taken over the Forglen Female School, formerly maintained by Lady Abercromby, they had resolved to confine the teaching in it (by a female teacher) to girls, reserving the public school proper (taught by the old parish schoolmaster) for boys. The schools were only a few hundred yards apart, and the public school buildings had been altered in accordance with this arrangement. The accused, however, refused to send his children to the female school. He pleaded that he was entitled to have them educated at the public school by a master, and that the arrangement for separating the sexes was illegal. Sheriff-Substitute Scott-Moncrieff, in imposing a fine of 1s., without expenses, said he was not obliged to pronounce judgment on the action of the school board, or to decide the constitutional rights of the accused. The only reason for the children not being educated was that the parents were engaged in a dispute with the school board. It would have been different if the complaint had been brought shortly after the accused first insisted on his right to send his children to the boys' school. But a considerable period had elapsed, and the accused must have been aware for some time that this dispute

Forglen Case. Procurator Fiscal of Banff *v.* Smith. Jan. 26, 1878. Sheriff-Substitute of Banff.

would not be easily or speedily settled. His conduct was therefore inexcusable.

Expense of Conducting Prosecutions.

By Minute of Treasury, dated 25th May 1851, it was declared that the salaries, then for the first time introduced, of procurators-fiscal should not only be in place of the profits derived from the criminal business previously conducted by them, but should include cases of sudden or suspicious death, and all criminal business of the kind previously defrayed at the Exchequer, which the Lord Advocate or the sheriff might direct the procurators-fiscal to perform in connection with their official duties. The procurators-fiscal are allowed to charge fees in bastardy, *ultima hæres*, and treasure-trove cases.

Port-Glasgow, West Kilbride, and Kilmarnock Cases. Feb. 20, 1875. Opinion of Counsel.

On being consulted by the Board of Education in these cases, Lord Advocate Gordon and Solicitor-General Watson expressed their opinion that prosecutions under Sects. 70 and 71 were not part of the duties of procurators-fiscal which are remunerated by salary. The fiscal, when directed by the school board to prosecute, was therefore entitled to professional fees. On the other hand, it was the strongly expressed view of Lord Advocate Young, at a meeting which he had with Sheriff Heriot, that prosecutions under Sect. 70 being criminal business, procurators-fiscal were not entitled to refuse instructions from the school board; that, as their salaries covered everything which the Lord Advocate or sheriff might at any time direct, they were not entitled to charge fees; and that such fees could not be legally certified by the sheriff as part of the expenses.

The practice on this point is not uniform.

Schedule B. General Rules.

A writer, employed as returning officer, is entitled to make professional charges.

Downie *v.* Annan School Board. Nov. 18, 1873. Lord Mure.

This was an action by a writer, who was town-clerk of Annan, for an account of about £40, consisting of £20 outlay, and the rest professional charges incurred to him as returning officer in the first school-board election for the burgh. Lord Mure (Ordinary) found him entitled to make professional charges, and not merely to charge a slump sum on the principle of *quantum meruit*. Under the Parliamentary and Municipal Elections Act, the sheriff or provost was *ex officio* appointed returning officer, and therefore acted gratuitously. But under the Education Act, the duty of the town council was merely to appoint a "fit and proper person to be re-"turning officer;" and if the town council appointed a professional

man, a claim for remuneration at the ordinary rates would lie. A charge for drawing and extending minutes of election was, however, struck out of the pursuer's account, as a charge was also made for the return made to the Board of Education. [For English practice, see case of Jones, Feb. 26, 1872—Rolls Court, Owen, 13th edition, p. 273.]

Article 25 of the General Order, 31st January 1876, and Circular, 3d March 1876, are *ultra vires* of the Department, and do not exclude actions by returning officers for fees.

In *Dodds* v. *School Board of Bathgate*, an action by a solicitor to recover fees for acting as returning officer, the pursuer pleaded that he was not bound to refer the question of amount to the Scotch Education Department, because the 25th Article of the General Order of 31st January 1876 was not warranted by the "Education (Scotland) Act, 1872," and was *ultra vires* of the said Department; further, that he was not bound by the scale of fees fixed by the Circular of 3d March 1876, which was issued after the pursuer had commenced his duties as returning officer, and which was also *ultra vires* of the said Department. Sheriff Monro, reversing the judgment of Sheriff-Substitute Home, sustained both these pleas, and remitted the pursuer's account to the auditor of Court for taxation. The Sheriff observes that he has found a general impression in very reliable quarters, that both Rule (in so far as it infers a binding reference to the Department) and Circular are *ultra vires*, and that in numerous instances this opinion has been acted on. "These rules are believed to be "founded on Schedule B, Art. 4, of the Scotch Education Act, "1872; but this seems a loose and too exacting interpretation "of the clause, and the matter seems more naturally to fall under "Article 5 of the same Schedule, which does not exclude the "jurisdiction of the sheriff."

Bathgate Case. March 26, 1877. Sheriff of Linlithgow.

Rules for Elections in Parishes and Districts.

Circumstances in which a nomination paper was held to be timeously received.

In *Armour* v. *Miller*, it was held by Sheriff Thoms, affirming the judgment of Sheriff-Substitute Anderson, that a nomination paper tendered to the returning officer after four o'clock in the afternoon of the eleventh day before the day of election (the tenth day being a Sunday), and rejected by the returning officer, was timeously received, and ought not to have been rejected. The Sheriff referred to the analogous cases of Morton *v.* Reid, 26th October

Cross and Burness Case. May 31, 1873. Sheriff of Caithness.

1870, 9 Macph. 29 (Registration Notices), and Craig *v.* Jex Blake, 16th March 1871, 9 Macph. 715 (Lodging papers in Court). [On the finality of a returning officer's decision on the validity of a nomination paper, where he has exercised his judgment, see Hedworth, &c., School Board, *ex parte* Richardson, Q. B., April 1874, a case under the English rules for triennial elections in boroughs.]

A harmless error in the time of publishing notice of candidates will not invalidate an election.

Millbrex Case. May 13, 1873. Sheriff-Substitute of Aberdeen.

In *Petition M'Gilvray and Others*, it was held by Sheriff Dove Wilson that where the day of election was 15th April, and public notice in terms of Rule VII. was given by the returning officer between 8 and 9 A.M. on 8th April, instead of before midnight on 7th April, the election was not thereby rendered invalid. The Sheriff-Substitute observes that in such matters the statute is to be interpreted liberally, so that its object may be attained without unnecessary waste of time and money. The rule for deciding what errors will invalidate an election is to ascertain whether the error could have affected the result of the election. Only 15 out of 129 electors did not vote; the petitioners did not say that a single vote had been lost by the error; and the respondents offered to prove that the error was not the cause of the 15 not voting. The error was a very small one—seven clear periods of twenty-four hours having elapsed between the publication of notice and the opening of the poll. The error was also explained to have been not wilful or careless, but the result of innocent misapprehension on the part of the returning officer. In the former case a different principle would apply, for suspicion would be thrown on the proceedings of the returning officer.

Although a candidate cannot withdraw within seven days of the election, he may publish a notice that he does not wish to be elected.

Fordoun Case. April 20, 1876. Sheriff of Aberdeen.

In this case it was alleged that three of the successful candidates had on the night preceding the day of election conspired with the returning officer to induce another candidate to withdraw, and that notice of his withdrawal was published by the returning officer at the polling station on the morning of the election, which notice the returning officer refused to take down, though requested to do so, and that if the said illegal notice had not appeared the three candidates first mentioned would not have been elected. Evidence being taken, it appeared that the returning officer, who was the son of a candidate, attended the meeting at which the withdrawal was arranged, drew up the notice, which was then signed by the three candidates first mentioned, with the approval of the with-

drawing candidate, and published it on the morning of the poll. The notice requested the electors not to vote for the withdrawn candidate. The name of the withdrawn candidate was, however, kept on the ballot papers, and votes were recorded for him. The Sheriff (Guthrie Smith) said that the election appeared to have been conducted with perfect fairness. A candidate's name could not be struck off the list within the period prescribed by the rules, but a candidate was entitled to issue a notice to the effect that he had changed his mind and did not want to get in. That was a perfectly competent proceeding—it was done every day; and party elections could not be conducted unless the leaders had perfect freedom in that respect. The attendance of the returning officer at a meeting of his father's supporters was quite unnecessary, but was not sufficient to invalidate the election. Had the notice been false or calculated to mislead the constituency, the result might have been different.

When candidates have improperly withdrawn, the returning officer is not entitled, without a poll, to declare the remaining candidates elected.

In *Cattley* v. *Ross and Another*, it was held by Sheriff-Substitute Taylor that where the number of candidates nominated, and not withdrawn seven clear days before the day of election, exceeded by three the number of members required to be elected, and three candidates having subsequently withdrawn, the returning officer on the day of election did not take a poll, but declared the five remaining candidates to have been duly elected, the election had not been conducted in conformity with the general rules, and was therefore invalid. The Sheriff-Substitute observed that it would be dangerous to allow returning officers to act according to their view of the general intention of the rules, in opposition to an express direction. It was not certain that the result of a poll would be exactly what the returning officer assumed, because one or more of the candidates who did not withdraw might have received no vote at all if their nominators changed their minds. The Sheriff-Substitute pointed out that under the Ballot Act the right to withdraw ceased at the same time as the right to nominate, while under the Rules for school-board elections a right to withdraw was expressly recognised for three days after the right to nominate ceased.

Edderton Case. April 28, 1873. Sheriff-Substitute of Cromarty.

A candidate may at any time previous to the election be withdrawn by the electors who nominated him with the written consent of the candidate. But if the withdrawal is not made before the poll has been appointed, the polling must take place, even though the number of candidates should not then exceed the number of members to be elected.

Edinburgh Case. 1873. Opinion of Solicitor-General Rutherfurd Clark.

Rules for taking Votes by Ballot in Parishes and Districts.

Question as to screening voter from observation.

Uphall Case. June 20, 1876. Sheriff of Linlithgow.

In *Fraser* v. *Hislop*, it was alleged that there was in the polling place no cover or screen by which the voter could be concealed from observation while marking his vote. The point was not decided; but it may be noted that, in the case of a Parliamentary (burgh) election, *The Drogheda Case* (O'Malley and Hardcastle's Election Cases, ii. 201), it was thought to be a material circumstance that, after receiving his ballot paper, the voter had to pass by a public gangway (from which he might exhibit his paper marked) to a second room provided for recording the votes.

It is illegal for a candidate to act as a presiding officer.

Whitburn Case. May 12, 1876. Sheriff of Linlithgow.

In *Ronaldson* v. *Brown*, it was held by Sheriff Monro, affirming the decision of Sheriff-Substitute Home, that it was illegal and *contra bonos mores* for a candidate to act as a presiding officer, and that the election of such a candidate was invalid. The Sheriffs observe that no person in a situation of trust is allowed to be *auctor in rem suam;* and that this rule, which the Scotch Education Department have expressly applied to returning officers, is also applicable to a presiding officer, who, where he is appointed, is directed by the Rules of 31st January 1876 "to conduct the taking of the votes in all respects in conformity with the foregoing "Rules"—*i.e.*, the Rules laid down for returning officers, one of which is that they cannot be candidates. [In R. *v.* White, L. R. 2 Q. B. 557, it was held on the regulations for triennial elections for boroughs in England that a candidate for election could not act as returning officer.]

A voter who has not taken the declaration of secrecy, must not be admitted to the counting of the votes.

Forteviot Case. April 29, 1876. Sheriff-Substitute of Perth.

In *Morrison* v. *Stephenson*, Sheriff-Substitute Barclay expressed the opinion (though he held he had no jurisdiction to decide the point) that it was a grave dereliction of duty on the part of a returning officer to admit to the place for counting the votes a voter who had not taken a declaration of secrecy, and to consult him with regard to the validity of a voting paper; and that this might invalidate the whole election. [On the right to appoint an agent in school board elections, see Clementson *v.* Mason, L. R. 10 C. P. 209.]

A returning officer may use as a private mark a consecutive number on the ballot papers.

In *Walker* v. *Mure and Saunders*, where the returning officer had used as a private mark a consecutive number on the ballot papers, it was argued, in a petition to have the election declared invalid, that this was a mark, within the meaning of Rule 7, by which the voter could be identified. The petitioner proposed to call witnesses, who would say that they voted in a certain order, with ballot papers of a certain number. The returning officer argued that, by circular of the Board of Education (17th March 1873), he was advised to use a private mark as a protection against the use of fraudulent papers; that Rule 7 applied only to marks made by voters; that as there were four polling compartments, and the voters were not said to have been numbered as they went into the compartments, the mark could not lead to identification. Had the numbers followed the valuation roll, it would have been different. Even if identification were possible on a scrutiny, as it always is in a parliamentary election, the whole votes had been examined secretly and sealed up. Sheriff Thoms, after proof, held that the petitioner had not proved that any mark had been used identifying a voter within the meaning of Rule 7, Schedule A.

Lerwick Case. May 15, 1873. Sheriff of Orkney and Shetland.

He may also mark the consecutive numbers on counterfoils to the ballot papers.

In *Fraser, &c.*, v. *Hislop, &c.*, it was held by Sheriff Monro, affirming the decision of Sheriff-Substitute Home, that the returning officer might lawfully issue ballot papers having counterfoils, both papers and foils being marked with consecutive numbers. [The same decision was given by Sheriff-Substitute Beatson Bell in the Strathmiglo case, *Storrar* v. *Walker*, 23d May, 1876.] Both Sheriffs also repelled an objection that the returning officer had caused his clerk to write down in a list the names of voters and the numbers of their ballot papers.

Uphall Case. June 20, 1876. Sheriff of Linlithgow.

The voter may mark the ballot paper with Roman numerals but not with the written names of figures.

In *Petition Laurie*, it was held by Sheriff Tait that where figures or crosses had been placed by the voter on the right hand opposite the candidate's name, but within the space containing the candidate's name, and not within the voting space, the vote was good, and ought to have been counted. The learned Sheriff observed that Sched. A, sect. V. par. 2, made no express reference to the voting space. It was further held that where the voter placed one, two, three, or even four, perpendicular strokes in the voting space, the vote was good, these being figures according to the Roman notation; but that where five perpendicular strokes were used, the vote was bad, as the figures did not belong to any

Tulliallan Case. April 13, 1873. Sheriff of Perth.

system of notation. [The same decision with regard to "Roman "numerals," was given by Sheriff Macdonald in the *Edderton* case, 24th April 1876; and also, even where five strokes were used, by Sheriff Beatson Bell, in the *Strathmiglo* case, 9th May 1876, where it was observed that cricketers used this mode of scoring. It was also held that small deleted crosses within the spaces containing the candidate's name, the crosses having afterwards been made in the voting space, were not marks by which the voter could be identified.]

Kinloch Rannoch Case. May 20, 1873. Sheriff-Substitute of Perth.

In *Corbet* v. *Macintyre*, it was held by Sheriff-Substitute Barclay that the word "five" written by the voter in the voting space opposite the name of the candidate, being neither in figures nor in crosses, was a mark by which the voter could be identified, and that the vote, therefore, could not be counted.

The voter may use both figures and crosses.

Newlands Case. May 30, 1873. Sheriff-Substitute of Peebles.

In *Hope* v. *Mackintosh*, where, each voter having five votes to give, a voter marked $\overset{4}{X}$ in the space opposite the name of one candidate, and $\overset{1}{X}$ in the space opposite the name of another, it was held by Sheriff-Substitute Orphoot that the vote was good, and ought to have been counted. The Sheriff observed that the school board constituency included a great number of persons who were unacquainted with business, and the rules ought therefore to be liberally interpreted in the matter of voting. No nullity ought to be presumed. The use of both figures and crosses was not expressly declared to make a vote invalid, nor was the vote bad from uncertainty. The voter was entitled to give five votes, and he exhausted that number by using figures. The crosses were, in the Sheriff's opinion, added merely to distinguish more clearly for whom the voter intended to vote.

The presiding officer may take a declaration of identity.

Abernethy Case. March 27, 1876. Sheriff-Substitute of Perth.

In *Hay* v. *Kippen*, it was held by Sheriff-Substitute Barclay that in cases of doubtful identity it was the duty of the presiding officer to take a declaration of identity, and that this was competent under the Privy Council regulations. The Sheriff could not see why the law in county and burgh elections should not be observed in school-board elections, or why rejected votes should not be set aside for scrutiny.

The fact of identification by a mark may be proved by an objector to a marked paper.

In *Petition Lord Arthur Cecil*, complaining that the returning officer had improperly rejected a ballot paper which was slightly blurred, Sheriff Napier, affirming the judgment of Sheriff-Substitute Orphoot, allowed the returning officer to prove that the paper was so marked as actually to have led to the identification of the voter. Traquair Case. April 1, 1876. Sheriff of Peebles.

Obviously accidental marks do not render votes invalid.

In *Lowson* v. *Keddie*, where, pen and ink, but no blotting-paper, having been provided in the polling place, a distinct impression of the crosses was made on the opposite end of the paper when it was folded, Sheriff-Substitute Beatson Bell held that this, being obviously an accidental blot, was not a mark by which the voter could be identified. Kettle Case. April 13, 1876. Sheriff-Substitute of Fife.

In *Troup* v. *Walker*, where a notice was published at the poll that any voter marking or blotting his paper might receive another from the returning officer, Sheriff-Substitute Beatson Bell repelled an objection to a paper which was blotted, obviously by an excessive figure being smeared out. The Sheriff pointed out that, in the rules for non-burghal elections, there was no provision for the return of spoilt papers. The mark was not one by which the voter could be identified. It could not have been made with a corrupt purpose, for it prominently called attention to the paper. Strathmiglo Case. May 9, 1876. Sheriff-Substitute of Fife.

Assistance may be given to blind or illiterate voters.

In *Wright* v. *Smeaton*, it was observed by Sheriff-Substitute Grahame, that according to the liberal construction which ought to be given to the powers of returning officers in parochial school-board elections, they were not to be held as acting illegally when they gave assistance to illiterate voters, or to others who by age or physical weakness were unable themselves to mark the ballot paper. Tulliallan Case. June 9, 1876. Sheriff-Substitute of Perth.

In *Fraser* v. *Hislop*, where the returning officer, who was also presiding officer, had written upon or marked papers at the request of voters who declared they could not read or write, it was held by Sheriff-Substitute Home that this mode of voting was not sanctioned by the general rules, and was therefore illegal; and that, as no record had been sealed up or kept in writing of the votes so taken, the whole election must be declared invalid. The Sheriff-Substitute pointed out that while provision was made for illiterate voters in burghal elections, the rules were silent on the subject in the case of non-burghal elections. Parole evidence could hardly be received for the purpose of ascertaining and rejecting the invalid votes. On appeal, Sheriff Monro reversed this decision. He refers to the Circular of 17th March 1873, issued by the Board of Education, in which, construing the rules for first election, they state that the returning officer in non-burghal elections may Uphall Case. June 20 1876. Sheriff of Linlithgow.

assist blind and illiterate voters, though he is not bound to do so, and that he may dispense with the declaration required by the Ballot Act. This was exactly what was done in the present case, with consent of all the candidates or their agents. The practice was approved of in a letter dated 23d May 1876 from the Scotch Education Department to the returning officer for Peebles, and, by the issue of 100 circulars to school boards, had been ascertained to be very general. [The same view was expressed by Sheriff-Substitute Cowan in the Lochwinnoch case, *Ramsay* v. *Craig*, 20th June 1876; and by Sheriff-Substitute Beatson Bell in the Strathmiglo case, *Storrar* v. *Walker*, 23d May 1876, the latter of whom observed that the school-board franchise was to be found in the Act of Parliament, and could not be taken away by the rules.]

Rules for Elections in Burghs.

As the Ballot Act and relative rules apply to these elections, the following decisions are important:—

If a ballot paper is marked with a straight line instead of a cross, or on the left-hand side of the candidate's name, or with any substantial mark unconnected with the voting mark, the vote is bad.

Stranraer Case. Haswell *v.* Jamieson. May 23, 1874. Second Division.

In a petition under the Parliamentary Elections Act, 1868, it was held by the Second Division of the Court, to whom the matter was referred by the election judge—(1) that where there was no attempt at a cross, but only a straight line, the vote was bad, because the Act directs a cross to be made; (2) that where there was a substantial mark unconnected with the voting mark, such as a written name (though not known to be that of the voter), or a black line on the back of the paper, or an additional cross on the front, the vote was bad, as leading to identification; (3) that if the cross was substantially on the right hand of the candidate's name, though not precisely within the voting space, the vote was good—but if on the left hand, the vote was bad, as leading to identification; (4) that where a cross was attempted to be made, but was ill made, as from unsteadiness of hand or accidental disturbance, the vote was good; (5) that where a cross was made with ink instead of pencil, the vote was good, as it might have been made by the presiding officer for an incapable voter. The Court observed that it was in no case necessary to prove actual identification, or that the voter had a corrupt design in putting a mark on the paper by which he might be identified. Lord Benholm dissented from this judgment, and held—(1) that the cross might be placed on the left hand of the candidate's name, provided it was clear for which candidate the vote was intended; (2) that the vote

ought to be sustained unless the additional mark was such as clearly to indicate a corrupt agreement by the voter. Under such an agreement the least obvious additional marks would be used.

If the voter writes the candidate's name, the vote is bad.

In this case, which related to a municipal election, the Court of Common Pleas in England held—(1) that where the voter wrote the candidate's name in the voting space, the vote was bad, because the handwriting might identify; (2) that the mere placing the cross on the left hand, or the mere making an additional cross, would not destroy the vote unless there was evidence of an agreement. "The "ballot paper must be marked so as to show that the voter in- "tended to vote for some one, and for which of the candidates. "It must *not* be marked so as to show that he intended to vote "for more candidates than he was entitled to vote for; nor so as "to leave it uncertain whether he intended to vote at all; nor as "to make it possible, by seeing the paper itself, *or by reference* "*to other available facts*, to identify the way in which he has "voted."

Birmingham Case. Woodward *v.* Sarsons. July 9, 1875. Common Pleas.

In this case, which related to a municipal election, it was again held by the Second Division of the Court, in conformity with the opinion of six out of seven judges (Lord Deas dissenting), that where a single stroke was used or a cross was placed on the left-hand side, the vote was bad. Lord Justice-Clerk Moncreiff pointed out that it was not merely a question for which candidate the vote was intended, but whether the Act and rules did not prescribe *uniformity of marks*, so as to protect the secrecy of the voter. Actual identification was not required; it was enough if, on inspection of the paper, the marks might lead to identification. The Court, however, sustained a ballot paper marked "*1*."

Musselburgh Case. Robertson *v.* Adamson. July 5, 1876. Second Division.

It will thus be seen that the English and Scotch Courts proceed on opposite principles in construing the Ballot Act and relative rules.

APPENDIX

APPENDIX.

I.

LANDS CLAUSES CONSOLIDATION (SCOTLAND) ACT.[1]
8 VICT. c. 19.—INCORPORATED SECTIONS.

An Act for consolidating in One Act certain Provisions usually inserted in Acts authorising the taking of Lands for Undertakings of a public Nature in *Scotland*.—[8th May 1845.]

And with respect to the purchase of lands by agreement, be it enacted as follows:—

Power to purchase Lands by Agreement.

6. Subject to the provisions of this and the special Act, it shall be lawful for the promoters of the undertaking[3] to agree with the owners of any lands[4] by the special Act authorised to be taken, and which shall be required for the purposes of such Act, and with all parties having any right or interest in such lands, or by this or the special Act enabled to sell and convey the same, for the absolute purchase of any such lands, or such parts thereof as they shall think proper, and for the purchase of all rights and interests in such lands of what kind soever.

Parties under Disability enabled to sell and convey.

7. It shall be lawful for all parties, being possessed of any lands, or any such right or interest therein, to contract for, sell, convey, and dispose of such lands, or of such right therein, to the promoters of the undertaking, and to enter into all necessary agreements for these purposes,

[1] Cf. pp. 73, 77, and 133.
[2] Special Act—viz., Education (Scotland) Acts 1872 and 1878.
[3] "The promoters of the undertaking" shall, for the purposes of this enactment, mean the school board of any parish or burgh. Section 37 of Education Scotland) Act, 1872.
[4] "Lands" includes houses, tenements, and heritages of any description or tenure.

and particularly it shall be lawful for the parties following so to do; (that is to say), all corporations, heirs of entail, liferenters, or persons holding any other partial or qualified estate or interest, married women seised in their own right or entitled to terce or dower, or any other right or interest, husbands, tutors, curators, and other guardians for infants, minors, lunatics, or idiots, fatuous or furious persons, or for persons under any other disability or incapacity, judicial factors, trustees or feoffees in trust for charitable or other purposes, executors, and administrators; and the power so to contract for, sell, convey, and dispose of as aforesaid may lawfully be exercised by all such parties, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion or expectancy after them, and as to such married women as if they were sole, and as to such tutors, curators, guardians, judicial factors, and trustees, on behalf of those for whom they respectively act, whether infants, minors, issue unborn, bankrupts, lunatics, idiots, fatuous and furious persons, married women, or other incapacitated persons, and that to the same extent as such infants, minors, bankrupts, lunatics, idiots, fatuous and furious persons, married women, and other incapacitated persons respectively could have exercised the same power under the authority of this and the special Act if they had respectively been under no disability.

Parties under Disability may exercise other Powers.

8. The power herein-after given to discharge any lands from feu-duties or casualties of superiority, as well as every other power required to be exercised by any superior pursuant to the provisions of this or the special Act, or any Act incorporated therewith, and the power to discharge lands from any rent, payment, charge, feu-duties, ground-annuals, or other real burdens or incumbrances, and to agree for the apportionment of any such rent, payment, charge, feu-duties, ground-annuals, or other real burdens and encumbrances, shall extend to and may lawfully be exercised by every party herein-before enabled to contract for, sell, dispose of, or convey lands or rights or interests therein to the company.

Amount of Compensation, in case of Parties under Disability, to be ascertained by Valuation, and paid into the Bank.

9. The purchase money or compensation to be paid for any lands, or any rights or interests therein, to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands, or rights or interest therein, except under the provisions of this or the special Act,[1] and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the sheriff,[2] or by the verdict of a jury, or by arbitration, or by the valuation of a valuator appointed by the sheriff under the provision herein-after contained, be less than shall be determined by the valuation of two able practical valuators, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two valua-

[1] This section applies to all cases of disability, whether the lands be taken by agreement or compulsorily.

[2] Sheriff includes sheriff-substitute.

tors cannot agree in the valuation then by such third valuator as the sheriff shall, upon application of either party, after notice to the other party, for that purpose nominate; and each of such two valuators, if they agree, or if not, then the valuator nominated by the said sheriff, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase money or compensation shall be deposited in the bank,[1] for the benefit of the parties interested, in manner herein-after mentioned.

Where Vendor absolutely entitled Lands may be sold on Feu-Duties, &c.

10. It shall be lawful for all parties entitled to dispose of absolutely any lands authorised to be purchased for the purposes of the special Act to convey such lands or any part thereof unto the promoters of the undertaking in consideration of an annual feu-duty or ground-annual payable by the promoters of the undertaking.

Payment of which to be charged on Tolls.

11. The feu-duties or ground-annuals stipulated by any such conveyance shall be charged on the tolls or rates, if any, payable under the special Act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such feu-duties or ground-annuals become payable; and if at any time the same be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such feu-duties or ground-annuals shall be payable may either recover the same from the promoters of the undertaking, with expenses of suit, by action in any competent court, or it shall be lawful for him to levy the same by poinding and sale of the goods and effects of the promoters of the undertaking.

Power to purchase Lands required for additional Accommodation.

12. In case the promoters of the undertaking shall be empowered by the special Act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions herein-before contained, would be enabled to sell, feu, and convey lands, to sell, feu, and convey the lands so authorised to be purchased for extraordinary purposes.

Authority to sell and repurchase such Lands.

13. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner and for such considerations and to such persons as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time, but the total quantity of land to be held at any one time by the promoters of the undertaking for the purposes aforesaid shall not exceed the prescribed quantity.

[1] The "bank" means any one of the incorporated or chartered banks in Scotland.

Restraint on Purchase from incapacitated Persons.

14. The promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes, purchase or acquire more than the prescribed quantity from any party under legal disability, or who would not be able to sell or convey such lands, except under the powers of this and the special Act; and if the promoters of the undertaking purchase or acquire the said quantity of land from any party under such legal disability, and afterwards sell or dispose of the whole or any part of the land so purchased, it shall not be lawful for any party, being under legal disability, to sell or convey to the promoters of the undertaking any other lands in lieu of the land so sold or disposed of by them.

Capital to be subscribed before compulsory Powers of Purchase put in force.

15. Where the undertaking is intended to be carried into effect by means of a capital to be subscribed by the promoters of the undertaking, the whole of the capital of the company or estimated sum for defraying the expenses of the undertaking shall be subscribed under contract binding the parties thereto, their heirs, executors, and administrators, for the payment of the several sums by them respectively subscribed before it shall be lawful to put in force any of the powers of this or the special Act, or any Act incorporated therewith, in relation to the compulsory taking of land for the purposes of the undertaking.

A Certificate of the Sheriff to be Evidence that the Capital has been subscribed.

16. A certificate, under the hands of the sheriff, certifying that the whole of the prescribed sum has been subscribed, shall be sufficient evidence thereof; and on the application of the promoters of the undertaking, and the production of such evidence as such sheriff thinks proper and sufficient, such sheriff shall grant such certificate accordingly.

PURCHASE OF LANDS OTHERWISE THAN BY AGREEMENT.

And with respect to the purchase and taking of lands otherwise than by agreement, be it enacted as follows:

Notice of Intention to take Lands.

17. When the promoters of the undertaking shall require to purchase any of the lands which by this or the special Act, or any Act incorporated therewith, they are authorised to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this or the special Act to sell and convey the same, or their rights and interests therein, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertak-

ing are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works.

Service of Notices on Owners and Occupiers of Lands.

18. All notices[1] required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties, or left at their last usual place of abode, if any such can, after diligent inquiry, be found; and in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, such notices when the same are to be given to an owner of lands shall be served on the factor or agent, if any, of such owner, and shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

If Parties fail to treat, or in case of Dispute, Question to be settled as after mentioned.

19. If for twenty-one days after the service of such notice any such party shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the special Act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

Dispute as to Compensation may be referred to Arbitration.

20. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this or the special Act enabled to sell and convey any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands, or of any interest therein, or as to the compensation to be made in respect thereof, it shall be lawful for the parties to refer the same to arbitration.

If Claim does not exceed 50l. to be settled by the Sheriff.

21. If the compensation claimed and disputed shall not exceed fifty pounds, unless both parties agree to refer such compensation to arbitration, the same shall be settled by the sheriff.

Method of proceeding for settling Disputes as to Compensation by Sheriff.

22. It shall be lawful for the sheriff, upon the application of either party with respect to any such question of disputed compensation, to

[1] The service of this notice constitutes a binding contract between the promoters and the party interested. Interests created subsequent to notice are not entitled to compensation.

issue an order for the other party to appear before such sheriff, at a time and place to be named in the order; and upon the appearance of such parties, or in the absence of any of them upon proof of due service of the order, it shall be lawful for such sheriff to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath, without written pleadings or reducing the evidence to writing; and the expenses of every such inquiry, excepting the remunerative expenses of the sheriff, shall be in the discretion of such sheriff, and he shall settle the amount thereof; and the determination of the sheriff upon such question shall be final and conclusive, and not subject to review or appeal in any form or court whatever.

Where Compensation claimed exceeds 50l. it may be settled by Arbitration if Claimant so desire.

23. If the compensation claimed or offered in any case shall exceed fifty pounds, and if the party claiming such compensation desire to have the same settled by arbitration, and signify such desire to the promoters of the undertaking, before they have presented their petition to the sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained, by a notice in writing, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose, then, within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner hereinafter provided.

Appointment of Arbiters when Questions are to be determined by Arbitration.

24. When any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorised or required to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbiter, each party on the request of the other party, shall nominate and appoint an arbiter, to whom such dispute shall be referred; and every appointment of an arbiter shall be made on the part of the company under the hand of the *secretary or any two of the directors* of the company, and on the part of any other party under the hand of such party, or if such party be a company or corporation under the hand of the proper officer or person authorised by such company or corporation, and such appointment shall be delivered to the arbiters and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matters so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbiter, such other party

fail to appoint an arbiter, then upon such failure the party making the request, and having himself appointed an arbiter, may appoint such arbiter to act on behalf of both parties, and such arbiter may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbiter shall be final.[1]

Vacancy of Arbiter to be supplied.

25. If, before the matters so referred shall be determined, any arbiter appointed by either party die, or become incapable, the party by whom such arbiter was appointed may nominate and appoint in writing some other person to act in his place, and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbiter may proceed *ex parte;* and every arbiter so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbiter at the time of such his death or disability as aforesaid.

Appointment of Oversman.

26. Where more than one arbiter shall have been appointed such arbiters shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an oversman to decide on any such matters on which they shall differ, or which shall be referred to him under the provisions of this or the special Act; and if such oversman shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another oversman in his place; and the decision of every such oversman on the matters on which the arbiters shall differ shall be final.

Lord Ordinary empowered to appoint an Oversman on Neglect of the Arbiters.

27. If in either of the cases aforesaid the said arbiters shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an oversman, it shall be lawful for the Lord Ordinary, on the application of either party to such arbitration, to appoint an oversman, and the decision of such oversman on the matters on which the arbiters shall differ, or which shall be referred to him under this or the special Act, shall be final.

In case of Death of single Arbiter, the Matter to begin de novo.

28. If, when a single arbiter shall have been appointed, such arbiter shall die, or become incapable to act, before he shall have made his award, the matters referred to him shall be determined by arbitration, under the provisions of this or the special Act, in the same manner as if such arbiter had not been appointed.

If either Arbiter refuse to act, the other to proceed ex parte.

29. If, when more than one arbiter shall have been appointed, either of the arbiters refuse or for seven days neglect to act, the other arbiter may proceed *ex parte*, and the decision of such arbiter shall be as effectual as if he had been the single arbiter appointed by both parties.

[1] The parties may prorogate a statutory arbitration, Clark *v.* City of Glasgow Union Railway Co., Dec. 17, 1868, 6 Sc. L. R. 185.

If Arbiters fail to make their award within 21 Days, the Matter to go to the Umpire.

30. If, where more than one arbiter shall have been appointed, and neither of them shall refuse or neglect to act as aforesaid, such arbiters shall fail to make their award within twenty-one days after the day on which the last of such arbiters shall have been appointed, or within such extended time as shall have been appointed for that purpose by both such arbiters under this Act, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

Power of Arbiters to call for Books, &c.

31. The said arbiters or their oversman may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the *parties* or their *witnesses on oath*, and administer the oaths necessary for that purpose, and take all evidence competent according to the law of *Scotland*.

Costs of Arbitration how to be borne.

32. All the expenses of any such arbitration and incident thereto to be settled by the arbiters or oversman, as the case may be, shall be borne by *the promoters of the undertaking*, unless the arbiters or oversman shall award the same sum as or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own expenses incident to the arbitration; and in all cases the expenses of the arbiters or oversman, as the case may be, and of recording the decreet arbitral or award in the books of the council and session, shall be borne by the promoters of the undertaking.

Award to be delivered to the Promoters of the Undertaking.

33. The arbiters shall make their decreet arbitral or award in writing, and shall cause the same to be recorded in the books of council and session, or shall deliver the same to the promoters of the undertaking, to be by them so recorded, and the said promoters shall, on demand, at their own expense, furnish an extract thereof from the said books to the other party to the arbitration; and extracts of decreets arbitral or award shall bear faith in all courts and cases the same as the original writings, unless the originals be improven.

Award not to be set aside for Error in Form.

34. No award made with respect to any question referred to arbitration under the provisions of this or the special Act, shall be set aside for irregularity or error in matter of form.

If Arbitration or Award not made within a limited Time, Compensation to be settled by a Jury.

35. If the party claiming compensation shall not, as herein-before provided, signify his desire to have the question of such compensation

settled by arbitration, or if, when the matter shall have been referred to arbitration, the arbiters or their umpire shall for three months have failed to make their or his award, the question of such compensation shall be settled by the verdict of a jury, as herein-after provided.

Party claiming Compensation may require a Jury to be summoned.

36. But if any party entitled to any compensation in respect of any such lands or interest therein, exceeding fifty pounds as aforesaid, shall desire to have the amount of such compensation determined by a jury, it shall in like manner be lawful for him to give notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed by him; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose, then, within twenty-one days after the receipt of any such notice from any party so entitled, they shall, unless the question shall previously have been agreed to be settled by arbitration, present their petition to the sheriff to summon a jury for settling the same in the manner herein-after provided, and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him, with costs, by action in any competent court.

Promoters of the Undertaking to give notice before summoning a Jury.

37. Before the promoters of the undertaking shall present their petition for summoning a jury for settling any case of disputed compensation they shall give not less than ten days notice to the other party of their intention to cause such jury to be summoned; and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest in such lands sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works.

Petition for summoning Jury to be addressed to the Sheriff.

38. In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury the promoters of the undertaking shall present their petition to the sheriff to summon a jury for that purpose; and such petition shall, if the promoters be a company or corporation, be signed by the secretary or proper officer or person authorised by such company or corporation, and if they be not a company or corporation such petition shall be signed by the promoters, or any two of them if more than one.

Jurymen to be summoned.

39. Upon the receipt of such petition as aforesaid the sheriff shall summon a jury of twenty-five indifferent persons, duly qualified to act as common jurymen for the trial of civil causes in the Court of Session, to meet at a time and place to be named by the sheriff in the warrant for that purpose.

Notice of Inquiry.

40. Not less than ten days *notice of the time and place of the inquiry* shall be given in writing by the promoters of the undertaking to the other party, or to his known agent.

Jury to be impannelled.

41. Out of the jurors appearing upon such summons a jury of thirteen persons shall be drawn by ballot; and if a sufficient number of jurymen do not appear in obedience to such summons the sheriff shall return other indifferent men, duly qualified as aforesaid, of the bystanders, or others that can speedily be procured, to make up the jury to the number aforesaid; and all parties concerned may have their lawful challenges for cause against any of the jurymen; and each party may have three peremptory challenges.

Sheriff to preside; Jury may view.

42. The sheriff shall preside on the said inquiry; and the party claiming compensation shall be deemed the pursuer, and the proceedings at such trials shall be conducted in like manner as in criminal trials; and, if either party so request, the sheriff shall order the jury, or any seven or more of them, to view the place or matter in controversy.

Penalty on Jury for Default.

43. If any person summoned and returned upon any jury under this or the special Act, whether common or special, do not appear, or if appearing he refuse to make oath, or in any other manner unlawfully neglect his duty, he shall, unless he show reasonable excuse to the satisfaction of the sheriff, forfeit a sum not exceeding ten pounds; and every such penalty shall be applied in satisfaction of the costs of the inquiry, so far as the same will extend; and, in addition to the penalty hereby imposed, every such juryman shall be subject to the same regulations, pains, and penalties as if such jury had been returned for the trial of a civil cause in the Court of Session.

Witnesses to be summoned.

44. If either party so request in writing, the sheriff shall summon before him any person considered necessary to be examined as a witness touching the matters in question.

Penalty on Witnesses making default.

45. If any person duly summoned to give evidence upon any such inquiry, and to whom a tender of his reasonable expenses shall have been made, fail to appear at the time and place specified in the summons, without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness, refuse to be examined on oath touching the subject-matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding ten pounds, and, in

addition to the penalty hereby imposed, shall be subject to the same regulations, pains, and penalties as if such witness, having been duly summoned, had failed to appear, or having appeared had refused to be examined in any other cause.

If the Party make default the Inquiry not to proceed.

46. If the party claiming compensation shall not appear at the time appointed for the inquiry, such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a valuator appointed by the sheriff in manner herein-after provided.

Jury to be sworn.

47. Before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given they shall make oath that they will truly and faithfully inquire of and assess such compensation or damage; and the sheriff shall administer such oaths, as well as the oaths of all persons called upon to give evidence.

Sums to be paid for Purchase of Lands and for Damage, to be assessed separately.

48. Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict by a majority of their number separately for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which, under the provisions herein contained, such party is entitled to sell or convey, and for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the lands by reason of severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith: Provided always, that if the parties agree to dispense with such separation the verdict may be returned for one sum.

Verdict and Judgment to be recorded.

49. The sheriff before whom such inquiry shall be held shall give judgment for the purchase money or compensation assessed by such jury; and the verdict and judgment shall be signed by the sheriff, and being so signed shall be kept by the clerk of the Sheriff Court among the records of that court; and such verdicts and judgments shall be deemed records, and the same or official copies thereof shall be good evidence in all courts and elsewhere; and all persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom on paying for each inspection thereof one shilling, and for every one hundred words copied or extracted therefrom sixpence.

Expenses of the Inquiry how to be borne.

50. On every such inquiry before a jury all the expenses of such inquiry shall be borne by the promoters of the undertaking, unless the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking, or unless the owner of or party interested in the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, in either of which cases one half of the expenses of the promoters of the undertaking shall be defrayed by the owner of or party interested in the lands.

Particulars of the Expenses.

51. The expenses of any such inquiry shall, in case of difference, be settled by the sheriff on the application of either party; and such expenses shall include all reasonable charges and expenses incurred in summoning, impannelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and agents, recording the verdict and judgment thereon, and otherwise incident to such inquiry, including the remuneration to the sheriff for his time and labour, and his reasonable travelling expenses, which remuneration for time and labour, exclusive of travelling expenses, shall be five guineas and no more for any inquiry as aforesaid, whether with or without a jury, unless such inquiry shall occupy more than one day or period of eight hours, in which case there shall be paid to the sheriff a sum of five guineas for each day or period of eight hours the inquiry may occupy, including the time necessarily occupied in travelling to and from the place of trial: Provided always, that the time occupied in travelling shall not in reference to any inquiry be computed at more than two days; and in all cases of inquiry as aforesaid before the sheriff, with or without a jury, the remuneration or expenses of the sheriff shall be borne by the promoters of the undertaking.

Payment of Expenses.

52. If any such costs shall be payable by the promoters of the undertaking, and if within seven days after demand such expenses be not paid to the party entitled to receive the same, they shall be recoverable by poinding and sale, and on application to the sheriff he shall issue his warrant accordingly; and if any such expenses shall be payable by the owner of the lands, or of any interest therein, the same may be deducted and retained by the promoters of the undertaking out of any money awarded by the jury to such owner or party interested, or determined by the valuation of a valuator under the provision herein-after contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole thereof, or if such expenses shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by poinding and sale, and on application to the sheriff he shall issue his warrant accordingly.

Special Jury to be summoned at the Request of either Party.

53. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have presented their petition to the sheriff; and for that purpose the promoters of the undertaking shall, by their petition to the sheriff, require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such petition, summon both the parties to appear before him, by themselves or their agents, at some convenient time and place appointed by him, for the purpose of nominating a special jury (not being less than five days from the service of such summons); and at the place and time so appointed the sheriff shall proceed to nominate a special jury in the manner in which such juries shall be required by the laws for the time being in force to be nominated by the sheriff in other cases, and the sheriff shall appoint a day for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give four days notice to the parties; and on the day so appointed the sheriff shall proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed in reducing special juries in the Court of Session.

Deficiency of Special Jurymen.

54. The special jury on such inquiry shall consist of thirteen of the said twenty who shall first appear on the names being called over, the parties having their lawful challenges against any of the said jurymen; and if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names of any other disinterested persons, qualified to act as special or common jurymen, who shall not have been previously struck off the aforesaid list, and who may then be attending the court, or can speedily be procured so as to complete such jury, all parties having their lawful challenges against such persons; and the sheriff shall proceed to the trial and adjudication of the matters in question by such jury; and such trial shall be attended in all respects with the like incidents and consequences, and the like penalties shall be applicable as herein-before provided in the case of a trial by common jury.

Other Inquiries before same Special Jury by Consent.

55. Any other inquiry than that for the trial of which such special jury may have been struck and reduced as aforesaid may be tried by such jury, provided the parties thereto respectively shall give their consent to such trial.

Compensation to absent Parties to be determined by a Valuator, appointed by the Sheriff.

56. The purchase money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from

any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury, after due notice thereof, and the compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of such valuator as the sheriff shall nominate for that purpose, as herein-after mentioned.

Sheriff to nominate a Valuator.

57. Upon application by the promoters of the undertaking to the sheriff, and upon such proof as shall be satisfactory to him that any such party is, by reason of absence from the kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such sheriff shall, by writing under his hand, nominate a valuator for determining such compensation as aforesaid, and such valuator shall determine the same accordingly, and shall annex to his valuation a declaration in writing, subscribed by him, of the correctness thereof.

Declaration to be made by the Valuator.

58. Before such valuator shall enter upon the duty of making such valuation as aforesaid he shall, in the presence of such sheriff, make and subscribe the oath following at the foot of such nomination; (that is to say,) "I *A. B.* do solemnly swear, That I will "faithfully, impartially, and honestly, according to the best of my skill "and ability, execute the duty of making the valuation hereby referred "to me. So help me God. *A. B.*

"Sworn and subscribed in the presence of ."

And if any valuator shall corruptly make such oath, or having made such oath, shall wilfully act contrary thereto, he shall be guilty of and incur the pains of perjury.

Valuation, &c., to be produced to the Owner of the Lands, on Demand.

59. The said nomination and declaration shall be annexed to the valuation to be made by such valuator, and shall be preserved together therewith, by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

Expense to be borne by the Promoters.

60. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

Purchase Money and Compensation how to be estimated.

61. In estimating the purchase money or compensation to be paid by the promoters of the undertaking in any of the cases aforesaid, regard

shall be had not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special Act, or any other Act incorporated therewith.

Compensation may be apportioned among different Parties.

62. On estimating the purchase money or compensation to be paid by the promoters of the undertaking in any of the cases aforesaid, the sheriff, arbiters, valuator, or jury, as the case may be, shall apportion the said compensation among the parties who may be interested in the said lands as joint owners or lessees, or as holding some security or burden or claim thereon or interest therein, and who shall have been parties to the said trial or arbitration or valuation: Provided always, that nothing herein contained shall prevent any person having a separate interest from having the same separately tried.

Where Compensation to absent Party has been determined by a Valuator the Party may have the same submitted to Arbitration.

63. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a valuator, and deposited in the bank under the provisions herein contained, by reason that the owner of or party entitled to convey such lands, or such interest therein as aforesaid, could not be found, or was absent from the kingdom, and if such owner or party shall be dissatisfied with such valuation, it shall be lawful for him, before he shall have applied to the Court of Session for payment or investment of the monies so deposited under the provisions herein contained, by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted to and settled by arbitration in the manner herein-before provided for settling disputes by arbitration.

Question to be submitted to the Arbiters.

64. The question to be submitted to the arbiters in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

If further sum awarded, Promoters to pay or deposit same within 14 *Days.*

65. If the arbiters shall decide that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after the making of such decreet arbitral or award, or in default thereof the same may be enforced by diligence, or recovered, with expenses, by action in any competent court.

Expenses of the Arbitration.

66. If the arbiters shall determine that the sum so deposited was sufficient, the expenses of and incident to such arbitration, to be determined by the arbiters, shall be in the discretion of the arbiters; but if the arbiters shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the expenses of and incident to the arbitration shall be borne by the promoters of the undertaking.

The omitted sections, 67-73, relate chiefly to the application of consigned money.

Upon Deposit being made, the Owners of the Lands to convey, or in default the Lands to vest in the Promoters of the Undertaking, upon a notarial Instrument being executed.

74. Upon deposit in the bank in manner herein-before provided of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking, under the provisions of this or the special Act, or any Act incorporated therewith, the owner of such lands, including in such term all parties by this Act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands, it shall be lawful for the promoters of the undertaking, if they think fit, to expede an instrument under the hands of a notary public, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made; and such instrument shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by the sheriff, by a jury, or by arbiters, or by a valuation appointed by the sheriff, as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking; and as against such parties, and all parties on behalf of whom they are herein-before enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands; and such instrument, being registered in the Register of Sasines in manner herein-after provided in regard to conveyances of lands, shall have the same effect as a conveyance so registered.[1]

[1] The title must be completed before possession is demanded. Alexander v. Bridge of Allan Water Co., 4th Feb. 1868, 6 M'Ph. 324.

Where Parties refuse to convey, or do not show Title, or cannot be found, the Purchase Money to be deposited.

75. If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse or is unable validly to convey such lands as directed by the promoters of the undertaking, or to discharge or obtain a discharge of any burden or incumbrance thereon which was not specially excepted from discharge, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear, on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands or any interest therein in the bank, to be placed, except in the cases herein otherwise provided for, to an account to be opened in the name of the parties interested in such lands (describing them, so far as the promoters of the undertaking can do), subject to the control and disposition of the Court of Session.[1]

Upon Deposit being made, a Receipt to be given, and the Lands to vest, upon a notarial Instrument being executed.

76. Upon any such deposit of money as last aforesaid being made, the cashier or other proper officer of such bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to expede an instrument under the hands of a notary public, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such instrument shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands; and such instrument, being registered in the Register of Sasines in manner herein-after directed in regard to conveyances of lands, shall have the same effect as a conveyance so registered.

The omitted sections, 77-79, relate to the application of consigned monies by the Court.

[1] The notarial instrument cannot be used merely because the owner's title is incomplete. Graham *v.* Caledonian Railway Co., 27th Jan. 1848, 10 D. 495. As to declaratory adjudication, cf. cases of Miles and Thomson, 5 M'Ph. 402 and 410.

CONVEYANCES.

And with respect to the conveyances of lands, be it enacted as follows:

Form of Conveyances.

80. Feus and conveyances of lands so to be purchased as aforesaid may be according to the form in the schedules (A.) and (B.) respectively to this Act annexed, or as near thereto as the circumstances of the case will admit; which feus and conveyances, being duly executed, and being registered in the Particular Register of Sasines kept for the county, burgh, or district in which the lands are locally situated, or in the General Register of Sasines for *Scotland* kept at *Edinburgh*, within sixty days from the last date thereof, which the respective keepers of the said registers are hereby authorized and required to do, shall give and constitute a good and undoubted right and complete and valid feudal title in all time coming to the promoters of the undertaking, and their successors and assigns, to the premises therein described, any law or custom to the contrary notwithstanding: Provided always, that it shall not be necessary for the promoters of the undertaking to record in any register of sasines any feus or conveyances in their favour which shall contain a procuratory of resignation or precept of sasine, or which may be completed by infeftment; and the title of the company under such last-mentioned feus or conveyances shall be regulated by the ordinary law of *Scotland*, until the said feus or conveyances, or the instruments of sasine thereon, shall have been recorded in a register of sasines.

Expenses of Conveyances.

81. The expenses of all conveyances of lands shall be borne by the promoters of the undertaking; and such expenses shall include all charges and expenses, incurred on the part as well of the seller as of the purchaser, of all conveyances of any such lands, and of any interests therein, and of establishing the title to such lands, and all other reasonable expenses incident to the investigation to such title.[1]

Taxation of Expenses of Conveyances.

82. If the promoters of the undertaking and the party entitled to any such expenses shall not agree as to the amount thereof, such amount shall be ascertained and decerned for by the Lord Ordinary, on a summary petition presented to him by the party entitled to recover the same; and the promoters of the undertaking shall pay to the party entitled thereto what the said Lord Ordinary shall decree for or in respect of such expenses, or in default thereof the same may be recovered in the same way as any other expenses payable under an order or decree of the Court, or the same may be recovered by poinding and sale in the manner herein-before provided in other cases of expenses; and the expense of taxing such expenses shall be borne by the promoters of the undertaking, unless upon such taxation one sixth part of the amount of such expenses shall be disallowed, in which case the ex-

[1] But not the expense of making up title in person of owner, Graham *v.* Caledonian Railway Co., 27th Jan. 1848, 10 D. 495.

penses of such taxation, and of or incident to the application to the Lord Ordinary, shall be borne by the party whose expenses shall be so taxed, and the amount thereof shall be ascertained by the said Lord Ordinary, and deducted by him accordingly in his judgment or decerniture.

Entry on Lands.

And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows:

Payment of Price to be made previous to Entry, except to Survey, &c.

83. The promoters of the undertaking shall not, except by consent of the owners and occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special Act, until they shall either have paid to every party having any interest in such lands, or deposited in the bank in the manner herein mentioned, the purchase money or compensation agreed or awarded to be paid to such parties respectively for their respective interests therein: Provided always, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.[1]

Promoters to be allowed to enter on Lands before Purchase, on making Deposit by way of Security and giving Bond.

84. Provided also, That if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to, or an award made or verdict given, for the purchase money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit in the bank by way of security, as herein-after mentioned, either the amount of purchase money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall by a valuator, appointed by the sheriff in the manner herein-before provided in the case of parties who cannot be found, be determined to be the value of such lands, or of the interest therein which such party is entitled to, or enabled to sell and convey, and also, if required so to do, to give to such party a bond, under the hand of the secretary or proper officer or person authorized, if the promoters be a company or corporation, or if they be not a company or corporation under the hand of the promoters, or any two of them if more than one, with two sufficient securities, to be approved of by the sheriff in case the parties differ, for a sum equal to the sum so to be deposited, for payment of such party, or for making

[1] As to form of bond, cf. Radcliffe *v.* Glasgow, Dumfries, and Carlisle Railway Co., 13th July 1847, 9 D. 1462.

a deposit in the bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase money or compensation as may in manner herein-before provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon at the rate of five pounds *per centum per annum* from the time of entering on such lands until such purchase money or compensation shall be paid to such party, or deposited in the bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special Act.

Deposit to be paid into Bank, and Cashier to give a Receipt.

85. The money so to be deposited as last aforesaid shall be paid into the bank,[1] to be placed to an account to be opened in the name of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the Court of Session; and upon such deposit being made the cashier or other proper officer of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

Deposit to remain as a Security, and to be applied under the Direction of the Court.

86. The money so deposited as last aforesaid shall remain in the bank by way of security to the parties whose lands shall so have been entered upon for the performance of the bond to be given by the promoters of the undertaking, as herein-before mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in the public funds or upon heritable securities, and accumulated; and upon the conditions of such bond being fully performed it shall be lawful for the Court of Session, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking, or, if such conditions shall not be fully performed, it shall be lawful for the said court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

[1] An incorporated or chartered bank in Scotland, cf. Methven *v.* Edinburgh, Perth, and Dundee Railway Co., 1st July 1851, 13 D. 1262.

Penalty on the Promoters of the Undertaking entering upon Lands without Consent, before Payment of the Purchase Money.

87. If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the special Act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands, or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of ten pounds, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before the sheriff; and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with expenses, by action in any competent court: Provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall *bonâ fide* and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as herein-before mentioned, although such person may not have been legally entitled thereto.

Decision of Sheriff not conclusive as to the Right of the Promoters.

88. On the trial of any action for any such penalty as aforesaid the decision of the sheriff, under the provision herein-before contained, shall not be held conclusive as to the right of entry on any such lands by the promoters of the undertaking.

Proceedings in case of Refusal to deliver Possession of Lands.

89. If in any case in which, according to the provisions of this or the special Act, or any Act incorporated therewith, the promoters of the undertaking are authorized to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands, or any other person, refuse to give up the possession thereof, or hinder the promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to apply by petition to the sheriff for possession of the same, and upon such application the sheriff may authorize and order possession of any such lands accordingly; and the expenses accruing by reason of such application, to be settled and decerned for by the sheriff, shall be paid by the person wrongfully refusing to give or hindering possession; and the amount of such expenses shall be deducted and retained by the promoters of the under-

taking from the compensation, if any, then payable by them to such party; or if no such compensation be payable to such party, or if the same be less than the amount of such expenses, then such expenses, or the excess thereof beyond such compensation, if not paid on demand, may be levied by poinding and sale, and the sheriff may issue his warrant accordingly.

Parties not to be required to sell Part of a House.

90. And be it enacted, that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house or other building or manufactory, if such party be willing and able to sell and convey the whole thereof.[1]

The omitted sections, 91-106 and 117-119, relate to intersected lands, common lands, lands burdened with securities and interests omitted to be purchased. The promoters are entitled to redeem securities. In Scotch practice notice is not given to bondholders, unless in possession. The bondholder is entitled to compensation for loss of interest. The promoters have six months to settle for an interest which was by mistake not previously settled.

LANDS SUBJECT TO RENT-CHARGES.

And with respect to any lands which shall be charged with any feu duty, ground annual, casualty of superiority, or any rent or other annual or recurring payment or incumbrance not herein-before provided for, be it enacted as follows:

Company to continue the Payment of Feu Duties, &c.

107. It shall be lawful for the promoters of the undertaking to enter upon and continue in possession of such lands, without redeeming the charges thereon, provided they pay the amount of such annual or recurring payment when due, and otherwise fulfil all obligations accordingly, and provided they shall not be called upon by the party entitled to the charge to redeem the same.

Discharge of Lands from such Charge.

108. If any difference shall arise between the promoters of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the special act, respecting the consideration to be paid for the discharge of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special Act, the same shall be determined as in other cases of disputed compensation.

Discharge of Part of Lands from Charge.

109. If part only of the lands charged with any such feu duty, ground annual, casualty of superiority, or any rent, payment, or in-

[1] This does not mean that notice may not be served for a part, but only that the owner may insist on the whole being taken. The word house is liberally interpreted.

cumbrance, be required to be taken for the purposes of the special Act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement the same shall be settled by the sheriff; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to discharge therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

Deposit in case of Refusal to Discharge.

110. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a discharge thereof; and if he fail so to do, or if he fail to adduce a good title to such charge, it shall be lawful for them to deposit the amount of such compensation in the bank in the manner herein-before provided in like cases; and also, if they think fit, to expede an instrument under the hands of a notary public, duly stamped, and to register the same in the manner herein-before provided in the case of the purchase of lands by them; and thereupon the feu duty, ground annual, casualty of superiority, rent, payment, or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

Charge to continue on Lands not taken.

111. If any such lands be so discharged from any such charge or incumbrance, or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge; and upon any such charge or portion of charge being so discharged the promoters of the undertaking, if required so to do, shall execute and grant in due form a probative deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special Act, and if the lands be discharged from part of such charge, what proportion of such charge shall have been discharged, and how much thereof continues payable, or if the lands so required shall have been discharged from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such deed or instrument shall be made and executed at the expense of the promoters of the undertaking, and shall be competent evidence in all courts and elsewhere of the facts therein stated.

Lands subject to Leases.

And with respect to lands subject to leases, be it enacted as follows:

Where Part only of Lands under Lease taken, the Rent to be apportioned.

112. If any lands shall be comprised in a lease or missive of lease for a term of years unexpired, part only of which lands shall be required for the purposes of the special Act, the rent payable in respect of the lands comprised in such lease or missive of lease shall be apportioned between the lands so required and the residue of such lands, and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties such apportionment shall be settled by the sheriff; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special Act; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease or missive of lease; and all the obligations, conditions, and agreements of such lease or missive of lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special Act, in the same manner as they would have been in case such part only of the land had been included in the lease or missive of lease.

Tenants to be compensated.

113. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required, or otherwise by reason of the execution of the works.[1]

Compensation to be made to Tenants for a Year, &c.

114. If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year[2] or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unex-

[1] The landlord has no interest in the compensation recovered by the tenant, Peddie *v.* Brown, 9th June 1857, 3 M'Q. 65.

[2] This applies to the case of the last year of a lease for a period of years. The tenant's interest is taken at the date of notice. Cf. City of Glasgow Union Railway Co. *v.* M'Ewen & Co., 18th March 1870, 8 M'Ph. 747; and North British Railway Co. *v.* Lindsay, 30th Nov. 1875, 3 Rettie, 168. Possession is probably necessary. It seems to be unsettled whether section 114 applies where land is not taken but only injuriously affected.

pired term or interest in such lands, and for any just allowance which ought to be made to him by any in-coming tenant, and for any loss or injury he may sustain, or if a part only of such lands be required, compensation for the damage done to him in his tenancy by the severing of the lands held by him, or otherwise injuriously affecting the same, and the amount of such compensation shall be determined by the sheriff, in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special Act.

Where greater Interest claimed than from Year to Year the Lease or Missive to be produced.

115. If any party, having a greater interest than as tenant for a year or from year to year, claim compensation in respect of any unexpired term or interest under any lease, missive of lease, or grant of any such lands, the promoters of the undertaking may require such party to produce the lease, missive of lease, or grant in respect of which such claim shall be made, or other legal evidence thereof in his power; and if, after demand made in writing by the promoters of the undertaking, such lease, missive of lease, or grant, or other legal evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

Limit of Time for compulsory Purchase.

116. And be it enacted, that the powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special Act shall not be exercised after the expiration of the prescribed period, and if no period be prescribed not after the expiration of three years from the passing of the special Act.[1]

Sale of Superfluous Lands.

And with respect to lands acquired by the promoters of the undertaking, under the provisions of this or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof, be it enacted as follow:

Lands not wanted to be sold, or in default to vest in Owners of Lands.

120. Within the prescribed period, or if no period be prescribed within ten years after the expiration of the time limited by the special Act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of all such superfluous lands in such manner as they may deem most advantageous, and apply the purchase

[1] The special Act, from the date of which the period of three years is to run, must apparently be the confirming Act mentioned in section 31 of the Education Act, 1878.

money arising from such sales to the purposes of the special Act, and in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto in proportion to the extent of their lands respectively adjoining the same.[1]

Lands to be offered to Owner of Lands from which they were severed, or to adjoining Owners.

121. Before the promoters of the undertaking dispose of any such superfluous lands they shall, unless such lands be situate within a town,[2] or be lands built upon, or be used for building purposes,[3] first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot, after diligent inquiry, be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.

Right of Pre-emption to be claimed within Six Weeks.

122. If any such persons be desirous of purchasing such lands, then, within six weeks after such offer of sale, they shall signify their desire in that behalf to the promoters of the undertaking; or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting, in respect of the lands included in such offer, shall cease; and a declaration in writing, made before the sheriff by some person not interested in the matter in question, stating that such offer was made, and was refused, or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not, after diligent inquiry, be found, or were not capable of entering into a contract for the purchase of such lands, shall in all courts be sufficient evidence of the facts therein stated.

Differences as to Price to be settled by Arbitration.

123. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the expenses of such arbitration shall be in the discretion of the arbiters.

[1] Cf. Glover's Trustees *v.* City of Glasgow Union Railway Co., 8th Jan. 1869, 7 M'Ph. 338; Caledonian Railway Co. *v.* City of Glasgow Union Railway Co., 2d July 1869, 7 M'Ph. 961.

[2] Cf. London and S.-W. Railway Co. *v.* Blackmore, L. N. 4 E. and I. App. 610. As to apportionment, cf. Moody *v.* Corbet, L. R., 1 Q. B. 510.

Lands to be conveyed to the Purchasers.

124. Upon payment or tender to the promoters of the undertaking of the purchase money so agreed upon or determined as aforesaid they shall convey such lands to the purchasers thereof by deed, under the common seal of the promoters of the undertaking, if they be a corporation, or if not a corporation under the hands of the promoters of the undertaking or any two of the directors or managers thereof acting by the authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him, and a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking, as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received.

Effect of Word "dispone" in Conveyances.

125. And be it enacted, That in every conveyance of lands to be made by the promoters of the undertaking under this or the special Act the word "dispone" shall operate as a clause of absolute warrandice by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns, as the case may be, to the respective disponees therein named, and the successors, heirs, executors, administrators, and assigns of such disponees, according to the quality or nature of such conveyances, and of the estate or interest therein expressed to be thereby conveyed, except so far as the same shall be restrained or limited by express words contained in such conveyance.

Superiorities not to be affected.

126. And be it enacted, That the rights and titles to be granted in manner herein mentioned in and to any lands taken and used for the purposes of this Act shall, unless otherwise specially provided for, in nowise affect or diminish the right of superiority in the same, which shall remain entire in the person granting such rights and titles; but in the event of the lands so used or taken being a part or portion of other lands held by the same owner under the same titles, the said company shall not be liable for any feu duties or casualties to the superiors thereof, nor shall the said company be bound to enter with the said superiors: Provided always, that before entering into possession of any lands full compensation shall be made to the said superiors for all loss which they may sustain by being deprived of any casualties, or otherwise by reason of any procedure under this Act.[1]

Land Tax and Poor's Rate to be made good.

127. And be it enacted, That if the promoters of the undertaking become possessed, by virtue of this or the special Act, or any Act incorporated therewith, of any lands charged with the land tax, or liable

[1] Cf. Raeburn *v.* Geddes, Oct. 24, 1870, 9 M'Ph. 20.

to be assessed to the poor's rate or prison assessment, they shall from time to time, until the works shall be completed and assessed to such land tax and poor's rate and prison assessment, be liable to make good the deficiency in the several assessments for land tax and poor's rate and prison assessment by reason of such lands having been taken or used for the purposes of the work; and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special Act; and on demand of such deficiency the promoters of the undertaking or their treasurer shall pay all such deficiencies to the collector of the said assessments respectively; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so, in accordance with the powers in that behalf given by the Acts for the redemption of the land tax.

SCHEDULES referred to in the foregoing Act.

SCHEDULE (A.)

Form of Conveyance.

I of in consideration of the sum of paid to me [*or, as the case may be*, into the Bank (*or* to *A.B.* of and *C.D.* of two trustees appointed to receive the same)], pursuant to an Act passed, *&c.*, intituled, *&c.* by the [*here name the company*], incorporated by the said Act, do hereby sell, alienate, dispone, convey, assign, and make over from me, my heirs and successors, to the said company, their successors and assignees, for ever, according to the true intent and meaning of the said act, all [*describing the premises to be conveyed*], together with all rights and pertinents thereto belonging, and all such right, title, and interest in and to the same as I and my foresaids are or shall become possessed of, or are by the said Act empowered to convey. [*Here insert the conditions (if any) of the conveyance, and a registration clause for preservation and diligence, and a testing clause, according to the form of the law of Scotland.*]

SCHEDULE (B.)

Form of Conveyance in consideration of Feu Duty or Rent-Charge.

I of in consideration of the feu duty or rent to be paid to me, my heirs and assigns, as herein-after mentioned, by the [*here name the company*], established and incorporated by virtue of an Act passed, *&c.*, intituled, *&c.*, do hereby dispone, convey, and make over from me, my heirs and successors, to the said company, their successors and assignees, for ever, according to the true intent and meaning of the said Act, all [*describing the premises to be conveyed*], together with all rights and pertinents thereunto belong-

ing, and all my right, title, and interest in and to the same and every part thereof, they the said company, their successors and assignees, yielding and paying unto me, my heirs and assignees, one clear annual feu duty or rent of by equal half-yearly portions henceforth on the [*stating the days. Here insert conditions of the conveyance (if any), and insert a registration clause for preservation and diligence, and a testing clause according to the form of the law of Scotland*].

THE LANDS CLAUSES CONSOLIDATION ACTS AMENDMENT ACT, 23 & 24 VICT. c. 106.

An Act to amend the Lands Clauses Consolidation Acts (1845) in regard to Sales and Compensation for Land by way of a Rent Charge, Annual Feu Duty, or Ground Annual.—[20*th August* 1860.]

Whereas it is expedient to extend the provisions of the Lands Clauses Consolidation Acts, 1845, in regard to sales of land or compensation for damages, in consideration of an annual rent charge, annual feu duty, or ground annual: . . . Be it enacted, &c.

Power to sell in consideration of Feu Duty extended to Parties under Disability.

3. The power to sell and convey lands in consideration of an annual feu duty or ground annual under the 10th section of the Lands Clauses Consolidation (Scotland) Act, 1845, and the power to recover such annual feu duty or ground annual, are hereby extended to all cases of sale, or purchase or compensation under the said Act, where the parties interested in such sale are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation except under the provisions of the said Act.

Note.—This power had previously been extended to heirs of entail by 16 & 17 Vict. c. 96, Sect. 14.

Conditions under which the above Power is to be exercised.

4. In every case of such sale or compensation by any parties other than parties seised in fee or entitled to dispose absolutely of the lands so sold or damaged, the amount of such rent charge, annual feu duty, or ground annual herein-before mentioned, shall be settled in the manner directed in the 9th section of each of the said Acts respectively: Provided that the amount of such annual rent charge, annual feu duty, or ground annual shall in no case be less than one fourth part greater than the net annual rent received by the parties beneficially interested

in such lands upon an average of the last seven years; and that a charge of 5 *per cent* on the gross sum estimated or fixed as aforesaid by way of compensation for any damage that may be done to the said lands, shall in all such cases be added to, and shall form a part of the said rent charge, annual feu duty, or ground annual; and that no fine, foregift, grassum, premium, or other consideration in the nature thereof, shall be paid or taken in respect of the lands so sold or damaged, other than the annual rent charge, annual feu duty, or ground annual made payable for such lands: Provided also that such rent charge shall be and remain upon for the same uses, trusts, and purposes as those upon which the rents and profits of the land so conveyed stood settled or assured at, or immediately before, the conveyance thereof. [There are corresponding provisions in the Entail Amendment Act, 16 & 17 Vict. c. 94, sect. 14.]

Borrowing Powers to be reduced by 20 Years' Purchase of such Feu Duty.

5. In case the promoters of the undertaking shall be empowered by any Act or Acts relating thereto to be passed after the passing of this Act, to borrow money to an amount not exceeding a prescribed sum, then in the event of the promoters of the undertaking agreeing at any time after the passing of this Act with any person under the powers of this Act, and of either of the Acts herein-before mentioned, or of either of the said Acts, only for the purchase of any lands in consideration of the payment of a rent charge, annual feu duty, or ground annual, the powers of the promoters of the undertaking for borrowing money shall be reduced by an amount equal to twenty years' purchase of any rent charge, annual feu duty, or ground annual, so for the time being payable.

II.

COMMISSIONERS CLAUSES ACT, 10 VICT. c. 16.[1]— INCORPORATED SECTIONS.

An Act for consolidating in One Act certain Provisions usually contained in Acts with respect to the Constitution and Regulation of Bodies of Commissioners appointed for carrying on Undertakings of a public Nature.—[23*d April* 1847.]

Mortgages.

And with respect to the mortgages to be executed by the commissioners, be it enacted as follows:

[1] Cf. § 45 of Education (Scotland) Act, 1872.

Form of Mortgages.

75. Every mortgage or assignation in security of rates or other property authorised to be made under the provisions of this or the special Act shall be by deed duly stamped, in which the consideration shall be duly stated; and every such deed shall be under the common seal of the commissioners[1] if they be a body corporate,[2] or if they be not a body corporate shall be executed by the commissioners or any five of them, and may be according to the form in the Schedule (B.) to this Act annexed or to the like effect; and the respective mortgagees or assignees in security shall be entitled one with another to their respective proportions of the rates and assessments or other property comprised in such mortgages or assignations respectively, according to the respective sums in such mortgages or assignations mentioned to be advanced by such mortgagees or assignees respectively, and to be repaid the sums so advanced, with interest, without any preference one above another by reason of the priority of advancing such monies, or of the dates of any such mortgages or assignations respectively.

Register of Mortgages to be kept, and to be open to Inspection.

76. A register of mortgages or assignations in security shall be kept by the clerk to the commissioners, and where by the special Act the commissioners are authorised or required to raise separate sums on separate rates or other property, a separate register shall be kept for each class of mortgages or assignations in security, and within fourteen days after the date of any mortgage or assignation in security an entry or memorial of the number and date thereof, and of the names of the parties thereto, with their proper additions, shall be made in the proper register; and every such register may be perused at all reasonable times by any person interested in any such mortgage or assignation in security without fee or reward.

Transfers of Mortgages.

77. Any person[3] entitled to any such mortgage or assignation may transfer his right and interest therein to any other person; and every such transfer shall be by deed duly stamped, wherein the consideration shall be truly stated; and every such transfer may be according to the form in the Schedule (C.) to this Act annexed, or to the like effect.

Register Transfers to be kept.

78. Within thirty days after the date of every such transfer, if executed within the United Kingdom, or otherwise within thirty days after the arrival thereof in the United Kingdom, it shall be produced to the clerk to the commissioners, and thereupon such clerk shall cause an entry or memorial thereof to be made, in the same manner as in the case of the original mortgage or assignation in security, and for such

[1] "The school board which is borrowing shall be deemed to be the commissioners."—§ 45 of Education Act.

[2] By § 22 of Education Act school boards are declared to be bodies corporate.

[3] "Person" includes a corporation, whether aggregate or sole.

entry the clerk may demand a sum not exceeding five shillings; and after such entry every such transfer shall entitle the transferee, his executors, administrators, or assigns, to the full benefit of the original mortgage or assignation in security, and the principal and interest thereby secured; and such transferee may in like manner assign or transfer the same again, *toties quoties:* and it shall not be in the power of any person, except the person to whom the same shall have been last transferred, his executors, administrators, or assigns, to make void, release, or discharge the mortgage or assignation so transferred, or any money thereby secured.

Interest on Mortgages to be paid half-yearly.

79. Unless otherwise provided by any mortgage or assignation in security, the interest of the money borrowed thereupon shall be paid half-yearly to the several parties entitled thereto.

Power to borrow Money at a lower Rate of Interest to pay off Securities at a higher Rate.

80. If the commissioners can at any time borrow or take up any sum of money at a lower rate of interest than any securities given by them and then be in force shall bear, they may borrow such sum at such lower rate as aforesaid, in order to pay off and discharge the securities bearing such higher rate of interest, and may charge the rates and other property which they may be authorised to mortgage or assign in security under this or the special Act, or any part thereof, with payment of such sum and such lower rate of interest, in such manner and subject to such regulations as are herein contained with respect to other monies borrowed on mortgage or assignation in security.

Repayment of Money borrowed at a Time and Place agreed upon.

81. The commissioners may, if they think proper, fix a period for the repayment of all principal monies borrowed under the provisions of this or the special Act, with the interest thereof, and in such case the commissioners shall cause such period to be inserted in the mortgage deed or assignation in security; and upon the expiration of such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to receive such principal money and interest, and if no other place of payment be inserted in such deed such principal and interest shall be payable at the office of the commissioners.

Repayment of Money borrowed when no Time or Place has been agreed upon.

82. If no time be fixed in the mortgage deed or assignation in security for the repayment of the money so borrowed, the party entitled to receive such money may, at the expiration or at any time after the expiration of twelve months from the date of such deed, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months previous notice for that purpose, and in the like case the commissioners may at any time pay off the money

borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee or creditor shall be delivered to the clerk or left at the office of the commissioners, and if given by the commissioners shall be given either personally to such mortgagee or creditor, or left at his residence, or if such mortgagee or creditor be unknown to the commissioners, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the *London Gazette* if the office of the commissioners is in *England*, the *Edinburgh Gazette* if it is in *Scotland*, or in the *Dublin Gazette* if it is in *Ireland*.

Interest to cease on Expiration of Notice to pay off a Mortgage Debt.

83. If the commissioners shall have given notice of their intention to pay off any such mortgage or assignation in security at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable thereon, unless, on demand of payment made pursuant to such notice or at any time thereafter, the commissioners fail to pay the principal and interest due at the expiration of such notice on such mortgage or assignation in security.

Monies borrowed on Security of Rates to be paid off in a limited Period.

84. In order to discharge the principal money borrowed as aforesaid on security of any of the rates, the commissioners shall every year appropriate and set apart out of such rates respectively a sum equal to the prescribed part, and if no part be prescribed one twentieth part of the sums so borrowed respectively, as a sinking fund to be applied in paying off the respective principal monies so borrowed, and shall from time to time cause such sinking fund to be invested in the purchase of exchequer bills or other government securities, or in *Scotland* deposited in one of the banks there incorporated by Act of Parliament or Royal Charter, and to be increased by accumulation in the way of compound interest or otherwise, until the same respectively shall be of sufficient amount to pay off the principal debts respectively to which such sinking fund shall be applicable, or some part thereof, which the commissioners shall think ought then to be paid off, at which time the same shall be so applied in paying off the same in manner herein-after mentioned.

Mode of paying off Mortgages.

85. Whenever the commissioners shall be enabled to pay off one or more of the mortgages or assignations in security which shall be then payable, and shall not be able to pay off the whole of the same class, they shall decide the order in which they shall be paid off by lot among the class to which such one or more of the mortgages or assignations in security belong, and shall cause a notice signed by their clerk to be given to the persons entitled to the money to be paid off, pursuant to such lot, and such notice shall express the principal sum proposed to be paid off, and that the same will be paid, together with the interest due thereon, at a place to be specified, at the expiration of six months from the date of giving such notice.

Arrears of Interest, when to be enforced by Appointment of a Receiver.

86. Where by the special Act the mortgagees or assignees in security of the commissioners are empowered to enforce the payment of the arrears of interest, or the arrears of principal and interest, due to them by the appointment of a receiver, then if, within thirty days after the interest accruing upon any such mortgage or assignation in security has become payable, and after demand thereof in writing, the same be not paid, the mortgagee or assignee in security may, without prejudice to his right to sue for the interest so in arrear in any of the superior courts, require the appointment of a receiver, by an application to be made as herein-after provided;

Arrears of Principal and Interest.

And if within six months after the principal money owing upon any such mortgage or assignation in security has become payable, and after demand thereof in writing, the same be not paid, together with all interest due in respect thereof, the mortgagee or assignee in security, without prejudice to his right to sue for such principal money, together with all arrears of interest, in any of the superior courts, may, if his debt amount to the prescribed sum, alone, or, if his debt do not amount to the prescribed sum, he may, in conjunction with other mortgagees or assignees in security whose debts being so in arrear after demand as aforesaid, together with his, amount to the prescribed sum, require the appointment of a receiver, by an application to be made as herein-after provided.

As to the Appointment of a Receiver.

87. Every application for a receiver in the cases aforesaid shall in *England* or *Ireland* be made to two justices, and in *Scotland* to the sheriff, and on any such application such justices or sheriff may, by order in writing, after hearing the parties, appoint some person to receive the whole or a competent part of the rates or sums liable to the payment of such interest, or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the rates or sums aforesaid, be fully paid; and upon such appointment being made all such rates and sums of money as aforesaid, or such part thereof as may be ordered by the said justices or sheriff, shall be paid to the person so to be appointed, and the money so paid shall be so much money received by or to the use of the party to whom such interest, or such principal and interest, as the case may be, shall be then due, and on whose behalf such receiver shall have been appointed, and after such interest and costs, or such principal, interest, and costs, have been so received, the power of such receiver shall cease.

Account Books to be open to the Inspection of Mortgagees.

88. The books of account of the commissioners shall be open at all reasonable times to the inspection of the respective mortgagees or assignees in security of the commissioners, with liberty to take extracts therefrom, without fee or reward.

SCHEDULE (B.) Sect. 75.

Form of Mortgage.

By virtue of [*here name the Special Act*], we [*here name the Corporation if the Commissioners be incorporated, or, if not incorporated,* five of the Commissioners,] appointed in pursuance of the said Act, in consideration of the sum of paid to the treasurer to the said Commissioners by *A.B.* of for the purposes of the said Act, do grant and assign unto the said *A.B.*, his executors, administrators, and assigns, such proportion of the rates, rents, profits, and other monies arising or accruing by virtue of the said Act from [*here describe the rates or other property proposed to be mortgaged*] as the said sum of doth or shall bear to the whole sum which is or shall be borrowed upon the credit of the said rates, rents, profits, or monies to hold to the said *A.B.*, his executors, administrators, and assigns, from this day until the said sum of with interest at per centum per annum for the same, shall be fully paid and satisfied (the principal sum to be repaid at the end of years from the date hereof [*in case any period be agreed upon for that purpose*]). Given under our corporate seal [*or*, in witness whereof we have hereunto set our hands and seals, *or, if the deed be granted in Scotland, insert the testing clause required by the law of Scotland, as the case may be*], this day of one thousand eight hundred and

SCHEDULE (C.) Sect. 77.

Form of Transfer of Mortgage.

I *A.B.* of in consideration of the sum of paid to me by *C.D.* of do hereby transfer to the said *C.D.*, his executors, administrators, and assigns, a certain mortgage, [*or, if the deed be granted in Scotland,* a certain assignation in security,] number made by the Commissioners for executing the [*here name the Special Act*] to bearing date the day of for securing the sum of and interest [*or, if such transfer be by endorsement,* the within security], and all my right, estate, and interest in and to the money thereby secured, and in and to the rates, rents, profits, or other monies thereby assigned. In witness whereof I have hereunto set my hand and seal [*or, if the deed be granted in Scotland, insert the testing clause required by the law of Scotland*], this day of one thousand eight hundred and

III.

INDUSTRIAL SCHOOLS ACT, 29 & 30 VICT. c. 118.

An Act to consolidate and amend the Acts relating to Industrial Schools in Great Britain.—[10*th August* 1866.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

PRELIMINARY.

Short Title.

1. This Act may be cited as the Industrial Schools Act, 1866.

Extent of Act.

2. This Act shall not extend to *Ireland*.

Acts described in First Schedule repealed.

3. The Acts described in the first Schedule to this Act are hereby repealed; but this repeal shall not affect the past operation of any such Act, or the force or operation of any certificate, order, rule, or sentence made or passed, or the validity or invalidity of anything done or suffered, or any right, title, obligation, or liability accrued, before the passing of this Act; nor shall this Act interfere with the institution or prosecution of any proceeding in respect of any offence committed against, or any penalty or forfeiture incurred under, any Act hereby repealed.

Interpretation of Terms.

4. In this Act—

The term "Justice" applies to *England* only, and means a Justice of the Peace having jurisdiction in the place where the matter requiring the cognizance of a Justice arises:

The term "two Justices" applies to *England* only, and means two or more Justices in Petty Sessions, or the Lord Mayor or an Alderman of the city of *London*, or a Police or Stipendiary Magistrate or other Justice having by law authority to act alone for any purpose with the powers of two Justices:

The term "Magistrate" applies to *Scotland* only, and includes Sheriff, Sheriff-Substitute, Justice of the Peace of a county, Judge in a police court, and Provost or Baillie of a city or burgh:

The term "prison authority" with respect to *England* has the same meaning as in the Prisons Act, 1865 [28 & 29 Vict. c. 126], and with respect to *Scotland* means the administrators of a prison as defined by the Prisons (*Scotland*) Administration Act, 1860 [23 & 24 Vict. c. 105]:

The term "parish" includes a place separately maintaining its own poor.

INDUSTRIAL SCHOOLS.

Description of Industrial Schools and Managers.

5. A school in which industrial training is provided, and in which children are lodged, clothed, and fed, as well as taught, shall exclusively be deemed an industrial school within the meaning of this Act.

The persons for the time being having the management or control of such a school shall be deemed the managers thereof for the purposes of this Act.

INSPECTOR.

Inspector of Industrial Schools and Assistant.

6. Such one of Her Majesty's inspectors of prisons as one of Her Majesty's Principal Secretaries of State (in this Act referred to as the Secretary of State) from time to time thinks fit to appoint to be the inspector of reformatory schools shall be also the inspector of industrial schools.

The Secretary of State may from time to time appoint a fit person to assist the inspector; and every person so appointed shall have such of the powers and duties of the inspector of industrial schools as the Secretary of State from time to time prescribes, but shall act under the direction of the inspector.

CERTIFIED INDUSTRIAL SCHOOLS.

Mode of certifying Industrial School.

7. The Secretary of State may, on the application of the managers of an industrial school, direct the inspector of industrial schools to examine into the condition of the school, and its fitness for the reception of children to be sent there under this Act, and to report to him thereon, and the inspector shall examine and report accordingly.

If satisfied with the report of the inspector the Secretary of State may, by writing under his hand, certify that the school is fit for the reception of children to be sent there under this Act, and thereupon the school shall be deemed a certified industrial school.

School not to be certified as Industrial and Reformatory.

8. A school shall not be at the same time a certified industrial school under this Act and a certified reformatory school under any other Act.

Notices of Certificate to be gazetted.

9. A notice of the grant of each certificate shall within one month be inserted by order of the Secretary of State in the *London* or in the *Edinburgh Gazette*, according as the school to which it refers is in *England* or in *Scotland*.

Copy of Gazette to be Evidence.

A copy of the Gazette containing the notice shall be conclusive evidence of the grant, which may also be proved by the certificate itself, or by an instrument purporting to be a copy of the certificate, and to be attested as such by the inspector of industrial schools.

Inspection of School.

10. Every certified industrial school shall from time to time and at least once in each year, be inspected by the inspector of industrial schools, or by a person appointed to assist him as aforesaid.

Alterations, &c., of Buildings to be approved.

11. No substantial addition or alteration shall be made to or in the buildings of any certified industrial school without the approval in writing of the Secretary of State.

Contribution by Counties and Boroughs to Establishment and Enlargement of Schools.

12. In *England* a prison authority may from time to time contribute such sums of money, and on such conditions as they think fit, towards the alteration, enlargement, or rebuilding of a certified industrial school, —or towards the support of the inmates of such a school,—or towards the management of such a school,—or towards the establishment or building of a school intended to be a certified industrial school,—or towards the purchase of land required either for the use of an existing certified industrial school, or for the site of a school intended to be a certified industrial school; provided,—

First, that not less than two months previous notice of the intention of the prison authority to take into consideration the making of such contribution, at a time and place to be mentioned in such notice, be given by advertisement in some one or more public newspaper or newspapers circulated within the district of the county or borough, and also in the manner in which notices relating to business to be transacted by the prison authority are usually given :

Secondly, that where the prison authority is the council of a borough, the order for the contribution be made at a special meeting of the council :

Thirdly, that where the contribution is for alteration, enlargement, rebuilding, establishment, or building of a school or intended school, or for purchase of land, the approval of the Secretary of State be previously given for that alteration, enlargement, rebuilding, establishment, building, or purchase.

In *Scotland* a county board may contribute to any certified industrial school with the consent and in the manner provided by the Prisons (*Scotland*) Administration Act, 1860, respecting contributions to reformatories.

Mode of obtaining Approval of Secretary of State.

13. In order to obtain the approval of the Secretary of State as aforesaid where required, the managers of the school, or promoters of the intended school, shall forward to the Secretary of State particulars of the proposed establishment or purchase, and a plan of the proposed alteration, enlargement, rebuilding, or building, drawn on such scale, and accompanied by such particulars and estimate of cost, as the Secretary of State thinks fit to require; and the Secretary of State may approve of the particulars and plan submitted to him, with or without modification, or may disapprove of the same, and his approval or disapproval shall be certified by writing under his hand.

CLASSES OF CHILDREN TO BE DETAINED IN CERTIFIED INDUSTRIAL SCHOOLS.

As to Children under fourteen Years of Age found begging, &c.

14. Any person may bring before two justices or a magistrate any child apparently under the age of fourteen years that comes within any of the following descriptions, namely,—

That is found begging or receiving alms (whether actually or under the pretext of selling or offering for sale any thing), or being in any street or public place, for the purpose of so begging or receiving alms;

That is found wandering and not having any home or settled place of abode, or proper guardianship, or visible means of subsistence;

That is found destitute, either being an orphan or having a surviving parent who is undergoing penal servitude or imprisonment;

That frequents the company of reputed thieves.

The justices or magistrate before whom a child is brought as coming within one of those descriptions, if satisfied on inquiry of that fact, and that it is expedient to deal with him under this Act, may order him to be sent to a certified industrial school.[1]

[1] Besides the classes of children enumerated here, who may be sent to an industrial school, 'The Prevention of Crimes Act, 1871' (34 & 35 Vict. c. 112), by § 14, provides that the children under fourteen years of age of a woman convicted under that Act may, under certain circumstances, be sent to an industrial school. The section is as follows:—

"Where any woman is convicted of crime, and a previous conviction of a crime is proved against her, any children of such woman under the age of fourteen years who may be under her care and control at the time of her conviction for the last of such crimes, and who have no visible means of subsistence, or who are without proper guardianship, shall be deemed to be children to whom in Great Britain the provisions of 'The Industrial Schools Act, 1866,' apply; and the Court by whom such woman is convicted, or two justices or a magistrate, shall have the same power of ordering such children to be sent to a certified industrial school as is vested in two justices or a magistrate by the 14th section of 'The Industrial Schools Act, 1866,' in respect of the children in the said section described."

The jurisdiction of the High Court to suspend orders pronounced under this section is not excluded by the power of discharge conferred on the Home Secretary by Sect. 43, Stirling *v.* Wilson, March 9, 1874, 1 Rett. J. C. 8. An order was accordingly set aside where a boy, aged 9, found begging, was, on the fol-

As to Children under twelve Years of Age charged with Offences.

15. Where a child apparently under the age of twelve years is charged before two justices or a magistrate with an offence punishable by imprisonment or a less punishment, but has not been in *England* convicted of felony, or in *Scotland* of theft, and the child ought, in the opinion of the justices or magistrate (regard being had to his age and to the circumstances of the case,) to be dealt with under this Act, the justices or magistrate may order him to be sent to a certified industrial school.

As to refractory Children under fourteen Years of Age in Charge of Parent, &c.

16. Where the parent or step-parent or guardian of a child apparently under the age of fourteen years represents to two justices or a magistrate that he is unable to control the child, and that he desires that the child be sent to an industrial school under this Act, the justices or magistrate, if satisfied on inquiry that it is expedient to deal with the child under this Act, may order him to be sent to a certified industrial school.

As to refractory Children under fourteen Years of Age in Workhouses, Pauper Schools, &c.

17. Where the guardians of the poor of a union or of a parish wherein relief is administered by a board of guardians, or the board of management of a district pauper school, or the parochial board of a parish or combination, represent to two justices or a magistrate that any child apparently under the age of fourteen years maintained in a workhouse or pauper school of a union or parish, or in a district pauper school, or in the poorshouse of a parish or combination, is refractory, or is the child of parents either of whom has been convicted of a crime or offence punishable with penal servitude or imprisonment, and that it is desirable that he be sent to an industrial school under this Act, the justices or magistrate may, if satisfied that it is expedient to deal with the child under this Act, order him to be sent to a certified industrial school.

ORDER OF DETENTION.

Form and Contents of Order sending Child to School.

18. The order of justices or a magistrate sending a child to a school (in this Act referred to as the order of detention in a school) shall be

lowing day, apprehended without warrant, and immediately carried before a magistrate, who pronounced the order after examining witnesses, but without notice to the mother, the child's only guardian—Wilson *v.* Stirling, *ut supra*. It was doubted in this case whether the provisions of the Summary Procedure Act, 1864, apply to proceedings under this section, or to any proceedings under the Act, except those under Sect. 32. In Lord Advocate *v.* Brown (see note to Sect. 38), it was said that, if notice was given to a pauper parent, it would not be necessary to give notice to the parochial board (see also Sect. 21). The previous Act, 17 & 18 Vict. c. 74, specially appointed intimation to be made to both parent and parochial board.

in writing signed by the justices or magistrate, and shall specify the name of the school.

The school shall be some certified industrial school (whether situate within the jurisdiction of the justices or magistrate making the order or not) the managers of which are willing to receive the child; and the reception of the child by the managers of the school shall be deemed to be an undertaking by them to teach, train, clothe, lodge, and feed him during the whole period for which he is liable to be detained in the school, or until the withdrawal or resignation of the certificate of the school takes effect, or until the contribution out of money provided by Parliament towards the custody and maintenance of the children detained in the school is discontinued, whichever shall first happen.

The school named in the order shall be presumed to be a certified industrial school until the contrary is shown.

In determining on the school the justices or magistrate shall endeavour to ascertain the religious persuasion to which the child belongs, and shall, if possible, select a school conducted in accordance with such religious persuasion, and the order shall specify such religious persuasion.

The order shall specify the time for which the child is to be detained in the school, being such time as to the justices or magistrate seems proper for the teaching and training of the child, but not in any case extending beyond the time when the child will attain the age of sixteen years.

Temporary Detention in Workhouse, &c.

19. Two justices or a magistrate, while inquiry is being made respecting a child or respecting a school to which he may be sent, may, by order signed by them or him, order the child to be taken to the workhouse or poorshouse of the union, parish, or combination in which he is found or resident,—or where (in *Scotland*) there is no such poorshouse, or the poorshouse is at an inconvenient distance, to such other place, not being a prison, as the magistrate thinks fit, the occupier whereof is willing to receive him,—and to be detained therein at the cost of the union, parish, or combination for any time not exceeding seven days, or until an order is sooner made for his discharge or for his being sent to a certified industrial school; and the guardians of the poor for the union or parish, or the keeper of the poorshouse, or other person to whom the order is addressed, are and is hereby empowered and required to detain him accordingly.

Power to Parent, &c., to apply to remove Child to a School conducted in accordance with Child's Religious Persuasion.

20. If the parent, step-parent, or guardian, or if there be no parent, step-parent, or guardian, then the god-parent or nearest adult relative of a child sent or about to be sent to a certified industrial school which is not conducted in accordance with the religious persuasion to which the child belongs, states to the justices or magistrate by whom the order of detention has been or is about to be made (or to two justices or a magistrate having the like jurisdiction) that he objects to the child being sent to or detained in the school specified or about to be specified

in the order, and names another certified industrial school in *Great Britain* which is conducted in accordance with the religious persuasion to which the child belongs, and signifies his desire that the child be sent thereto, then and in every such case the justices or magistrate shall, upon proof of such child's religious persuasion, comply with the request of the applicant, provided,—

First, that the application be made before the child has been sent to a certified industrial school, or within thirty days after his arrival at such a school:

Secondly, that the applicant show to the satisfaction of the justices or magistrate that the managers of the school named by him are willing to receive the child:

Provided always, with respect to *Scotland*, that if any child who has become chargeable to any parish, and who is under this section sent from *Scotland* to a school out of *Scotland*, might have been removed from *Scotland* (under any Act for the time being in force relating to the relief of the poor in *Scotland*) at the instance of the inspector of the poor of the parish to which he has become chargeable, had he not been sent out of *Scotland* under this section, then and in every such case the chargeability on such parish for such child shall cease on his being so sent out of *Scotland*.

Where Order to be for Detention in School of Parochial Board.

21. In *Scotland* where a magistrate is about to make or has made an order for sending a child to a certified industrial school, and the child is chargeable at the time to any parish, or has been so chargeable within three months then last past, and there is in that parish a certified industrial school maintained by the parochial board thereof, and conducted in accordance with the religious persuasion to which the child belongs, and the inspector of the poor of such parish certifies to the magistrate (or to a magistrate having the like jurisdiction), that he requires the child to be sent to the certified industrial school in such parish maintained by the parochial board thereof, and conducted in accordance with the religious persuasion to which the child belongs, then and in every such case the magistrate shall direct the child to be sent to the last-mentioned school accordingly, the inspector of the poor defraying the expense of conveying the child thither; provided that where the order of detention has been made, the application of the inspector to the magistrate be made within fourteen days of the day of the making of the order.

Order to be Warrant for Conveyance and Detention.

22. The order of detention in a school shall be forwarded to the managers of the school with the child, and shall be a sufficient warrant for the conveyance of the child thither, and his detention there.

Expenses of Conveyance to School.

23. The expense of conveying to a certified industrial school, a child ordered to be sent there, shall be defrayed by the police authorities by whom he is conveyed, and shall be deemed part of the current expenses of those police authorities.

Evidence of Order of Detention.

24. An instrument purporting to be an order of detention in a school, and to be signed by two justices or a magistrate, or purporting to be a copy of such an order, and to be certified as such a copy by the clerk to the justices or magistrate by whom the order was made, shall be evidence of the order.

MANAGEMENT OF SCHOOL.

Religious Instruction in School.

25. A minister of the religious persuasion specified in the order of detention as that to which the child appears to the justices or magistrate to belong, may visit the child at the school on such days and at such times as are from time to time fixed by regulations made by the Secretary of State, for the purpose of instructing him in religion.

Lodging Child out of School.

26. The managers of a school may permit a child sent there under this Act to lodge at the dwelling of his parent or of any trustworthy and respectable person, so that the managers teach, train, clothe, and feed the child in the school as if he were lodging in the school itself, and so that they report to the Secretary of State, in such manner as he thinks fit to require, every instance in which they exercise a discretion under this section.

Licence for living out of School.

27. The managers of a school may, at any time after the expiration of eighteen months of the period of detention allotted to a child, by licence under their hands, permit him to live with any trustworthy and respectable person named in the licence, and willing to receive and take charge of him.

Any licence so granted shall not be in force for more than three months, but may at any time before the expiration of those three months be renewed for a further period not exceeding three months, to commence from the expiration of the previous period of three months, and so from time to time until the period of the child's detention is expired.

Any such licence may also be revoked at any time by the managers of the school by writing under their hands, and thereupon the child to whom the licence related may be required by them, by writing under their hands, to return to the school.

The time during which a child is absent from a school in pursuance of a licence shall, except where such licence has been forfeited by his misconduct, be deemed to be part of the time of his detention in the school, and at the expiration of the time allowed by the licence, he shall be taken back to the school.

A child escaping from the person with whom he is placed under a licence, or refusing to return to the school on the revocation of his licence, or at the expiration of the time allowed thereby, shall be deemed to have escaped from the school.

Power to apprentice Child.

28. The managers of a school may, at any time after a child has been placed out on licence as aforesaid, if he conducted himself well during his absence from the school, bind him, with his own consent, apprentice to any trade, calling, or service, notwithstanding that his period of detention has not expired, and every such binding shall be valid and effectual to all intents.

Rules of School to be approved by Secretary of State.

29. The managers of a certified industrial school may from time to time make rules for the management and discipline of the school, not being inconsistent with the provisions of this Act; but those rules shall not be enforced until they have been approved in writing by the Secretary of State; and rules so approved shall not be altered without the like approval.

A printed copy of rules purporting to be the rules of a school so approved, and to be signed by the inspector of industrial schools, shall be evidence of the rules of the school.

Evidence as to Reception in School, &c.

30. A certificate purporting to be signed by one of the managers of a certified industrial school or their secretary, or by the superintendent or other person in charge of the school, to the effect that the child therein named was duly received into and is at the signing thereof detained in the school, or has been duly discharged or removed therefrom, or otherwise disposed of according to law, shall be evidence of the matters therein stated.

Liability to Removal not affected by Stay at School.

31. The time during which a child is detained in a school under this Act, shall for all purposes be excluded in the computation of time mentioned in section one of the Act of the session of the ninth and tenth years of Her Majesty's reign (chapter sixty-six), "to amend the "laws relating to the removal of the poor," as amended by any other Act.

OFFENCES AT SCHOOL, &C.

Refusal to conform to Rules.

32. If a child sent to a certified industrial school, and while liable to be detained there, being apparently above ten years of age, and whether lodging in the school itself or not, wilfully neglects or wilfully refuses to conform to the rules of the school, he shall be guilty of an offence against this Act, and on summary conviction thereof before two justices or a magistrate, shall be liable to be imprisoned, with or without hard labour, for any term not less than fourteen days and not exceeding three months, and the justices or magistrate before whom he is convicted, may direct him to be sent at the expiration of the term of his imprisonment to a certified reformatory school, and to be there detained subject and according to the provisions of the Reformatory Schools Act, 1866 [29 & 30 Vict. c. 117].

Penalty on Child escaping from School.

33. If a child sent to a certified industrial school, and while liable to be detained there, and whether lodging in the school itself or not, escapes from the school, or neglects to attend thereat, he shall be guilty of an offence against this Act, and may at any time before the expiration of his period of detention be apprehended without warrant, and may (any other Act to the contrary notwithstanding) be then brought before a justice or magistrate having jurisdiction in the place or district where he is found, or in the place or district where the school from which he escaped is situate; and he shall thereupon be liable, on summary conviction before such a justice or magistrate, to be, by and at the expense of the managers of the school, brought back to the same school, there to be detained during a period equal to so much of his period of detention as remained unexpired at the time of his committing the offence.

If the child charged with such an offence is apparently above ten years of age, then on his summary conviction of the offence before two such justices or such a magistrate, he shall be liable at the discretion of the justices or magistrate, instead of being sent back to the same school, to be imprisoned with or without hard labour, for any term not less than fourteen days and not exceeding three months, and the justices or magistrate before whom he is convicted, may direct him to be sent at the expiration of the term of his imprisonment to a certified reformatory school, and to be there detained, subject and according to the provisions of the Reformatory Schools Act, 1866 [29 & 30 Vict. c. 117].

Penalty on Persons inducing Offenders to escape from Certified Industrial Schools.

34. If any person does any of the following things (that is to say)—

First, knowingly assists, directly or indirectly, a child liable to be detained in a certified industrial school to escape from the school;

Second, directly or indirectly induces such a child so to escape;

Third, knowingly harbours or conceals a child who has so escaped, or prevents him from returning to school, or knowingly assists in so doing,—

Every such person shall be guilty of an offence against this Act, and shall, on summary conviction thereof before two justices or a magistrate, be liable to a penalty not exceeding twenty pounds, or, at the discretion of the justices, to be imprisoned for any term not exceeding two months, with or without hard labour.

EXPENSES OF CHILDREN IN SCHOOLS.

Power to Treasury to contribute towards Custody, &c., of Children detained.

35. The Commissioners of Her Majesty's Treasury may from time to time contribute, out of money provided by Parliament for the purpose, such sums as the Secretary of State from time to time thinks fit to recommend towards the custody and maintenance of children detained in certified industrial schools; provided that such contributions shall not

exceed two shillings *per* head *per* week for children detained on the application of their parents, step-parents, or guardians.

Power to Prison Authority to contract for Reception of Children in Schools.

36. In *England* a prison authority may contract with the managers of a certified industrial school for the reception and maintenance therein of such children as are from time to time ordered by justices to be sent there from the district of the prison authority.

Power to Guardians of Poor, &c., to contribute.

37. The guardians of the poor of a union or parish, or the board of management of a district pauper school, or the parochial board of a parish or combination, may from time to time, with the consent in *England* of the Poor Law Board, and in *Scotland* of the Board of Supervision, contribute such sums as they think fit towards the maintenance of children detained in a certified industrial school on their application.

Recovery of Cost of Maintenance in Schools in Scotland, when Parishes, &c., are liable.

38. In *Scotland* where a child sent to a certified industrial school under this Act is at the time of his being so sent, or within three months then last past has been, chargeable to any parish, the parochial board and inspector of the poor of the parish of the settlement of such child, if the settlement of the child is in any parish in *Scotland*, shall, as long as he continues so chargeable, be liable to repay to the Commissioners of Her Majesty's Treasury all expenses incurred in maintaining him at school under this Act to an amount not exceeding five shillings *per* week, and in default of payment those expenses may be recovered by the inspector of industrial schools, or any agent of the inspector, in a summary manner before a magistrate having jurisdiction in the place where the parish is situate.[1]

Provided always that nothing in this Act shall prevent any parochial board on whose funds the cost of support of any such child has become a charge from adopting such steps for the recovery of any sums which may have been paid by such parochial board for any such child against the parish of his settlement, or for his removal, as may be competent to them under any Act for the time being in force relating to the relief of the poor in *Scotland*.

Contribution by Parent, &c.

39. The parent, step-parent, or other person for the time being legally liable to maintain a child detained in a certified industrial school shall, if of sufficient ability, contribute to his maintenance and training therein a sum not exceeding five shillings *per* week.

[1] It is no defence to an action for recovery of such expenses that the proceedings under Sect. 14 were irregular, and that the order, though *ex facie* regular, was illegally obtained—Lord Advocate *v.* Brown, Dec. 2, 1875, 3 Rett. 188. But chargeability may cease during the period of detention at school.

Order for Enforcement of Contribution by Parent, &c.

40. On the complaint of the inspector of industrial schools, or of any agent of the inspector, or of any constable under the directions of the inspector (with which directions every constable is hereby required to comply), at any time during the detention of a child in a certified industrial school, two justices or a magistrate having jurisdiction at the place where the parent, step-parent, or other person liable as aforesaid resides may, on summons to the parent, step-parent, or other person liable as aforesaid, examine into his ability to maintain the child, and may, if they or he think fit, make an order or decree on him for the payment to the inspector or his agent of such weekly sum not exceeding five shillings *per* week, as to them or him seems reasonable, during the whole or any part of the time for which the child is liable to be detained in the school.

Every such order or decree may specify the time during which the payment is to be made, or may direct the payment to be made until further order.

In *Scotland* any such order or decree shall be held to be and to have the effect of an order or decree in each and every week for payment of the sum ordered or decreed to be paid for such week; and under the warrant for arrestment therein contained (which the magistrate is hereby authorised to grant if he sees fit), it shall be lawful to arrest weekly for payment of such weekly sum as aforesaid the wages of the defender due and current, and such arrestment shall attach not only to the wages due and payable to the defender at the date thereof, but also to the wages current for the week or other term or period in which such arrestment is executed, any law or statute notwithstanding.

Every such payment or a proper proportionate part thereof shall go in relief of the charges on Her Majesty's Treasury, and the same shall be accounted for as the Commissioners of Her Majesty's Treasury direct, and where the amount of the payment ordered in respect of any child exceeds the amount contributed by the Commissioners of Her Majesty's Treasury in respect of that child, the balance shall be accounted for and paid to the managers of the school.

The Secretary of State may, in his discretion, remit wholly or partially any payment so ordered.

Two justices or a magistrate having jurisdiction to make such an order or decree may from time to time vary any such order or decree as circumstances require, on the application either of the person on whom such order or decree is made, or of the inspector of industrial schools, or his agent, on fourteen days notice being first given of such application to the inspector or agent, or to such person respectively.

DISCHARGE, &C., OF CHILDREN FROM SCHOOL.

Detention to cease on Child attaining Sixteen.

41. A person who has attained the age of sixteen years shall not be detained in a certified industrial school except with his own consent in writing.

Transfer to another School by Secretary of State.

42. The Secretary of State may at any time order a child to be transferred from one certified industrial school to another, but so that the whole period of his detention be not thereby increased.

The Secretary of State may also at any time order a child being under sentence of detention in an industrial school established under any other Act of Parliamant, the general rules for the government whereof have been approved by the Secretary of State, to be transferred to a certified industrial school under this Act; and in that case the child shall after the transfer be deemed to be subject in all respects to the provisions of this Act, but so that the whole period of his detention be not by such transfer increased.

The Commissioners of Her Majesty's Treasury may pay, out of money provided by Parliament for the purpose, such sum as the Secretary of State thinks fit to recommend, in discharge of the expenses of the removal of any child transferred under the provisions of this Act.

Discharge by Secretary of State.

43. The Secretary of State may at any time order any child to be discharged from a certified industrial school or from any industrial school established under any other Act of Parliament, the general rules for the government whereof have been approved by the Secretary of State, either absolutely or on such condition as the Secretary of State approves, and the child shall be discharged accordingly.[1]

WITHDRAWAL, &c., OF CERTIFICATE OF SCHOOL.

Power for Secretary of State to withdraw Certificate.

44. The Secretary of State, if dissatisfied with the condition of a certified industrial school, may at any time, by notice under his hand addressed to and served on the managers thereof, declare that the certificate of the school is withdrawn as from a time specified in the notice, not being less than six months after the date thereof; and at that time the certificate shall be deemed to be withdrawn accordingly, and the school shall thereupon cease to be a certified industrial school.

Resignation of Certificate by Managers.

45. The managers or the executors or administrators of a deceased manager (if only one) of a certified industrial school may give notice in writing to the Secretary of State of their intention to resign the certificate of that school, and at the expiration in the case of managers of six months, and in the case of executors or administrators of one month, from the receipt of that notice by the Secretary of State (unless before

[1] This power does not exclude the review by the High Court of Justiciary of an order pronounced under Sect. 14, Wilson *v.* Stirling, March 9, 1874, 1 Rettie (J.C.), 8.

that time the notice is withdrawn) the certificate shall be deemed to be resigned accordingly, and the school shall thereupon cease to be a certified industrial school.

Gazetting and Evidence of Withdrawal, &c.

46. A notice of the withdrawal or resignation of the certificate of a certified industrial school shall within one month be inserted by order of the Secretary of State in the *London* or in the *Edinburgh Gazette*, according as the school is in *England* or *Scotland*.

A copy of the Gazette containing such notice shall be conclusive evidence of such withdrawal or resignation.

A certificate shall be presumed to be in force until the withdrawal or resignation thereof is proved.

Cesser of Reception of Children on Notice, &c.

47. Where notice is given of the withdrawal or resignation of the certificate of a certified industrial school no child shall be received into the school for detention under this Act after the receipt by the managers of the school of the notice of withdrawal, or after the date of the notice of resignation, as the case may be; but the obligation of the managers to teach, train, clothe, lodge, and feed any children detained in the school at the time of such receipt or at the date of such notice shall, except as far as the Secretary of State otherwise directs, be deemed to continue until the withdrawal or resignation of the certificate takes effect, or until the contribution out of money provided by Parliament towards the custody and maintenance of the children detained in the school is discontinued, whichever shall first happen.

Discharge of Children detained, &c.

48. Where a school ceases to be a certified industrial school the children detained therein shall be either discharged or transferred to some other certified industrial school by order of the Secretary of State.

HOUSES OF REFUGE, &C., IN SCOTLAND.

In Scotland, Power for Industrial Schools under Local Acts, &c., to receive Children.

49. Where in any city, town, or place in *Scotland* there has been erected, under Local Act of Parliament or otherwise, any house of refuge for destitute children or any industrial school, or other similar institution, the commissioners, directors, or managers thereof may receive and maintain therein, if willing to do so, all such children as are sent thereto under this Act, and may pay such portion of the fund under their control as they think proper for the training, maintenance, and disposal of such children; provided that such house of refuge, school, or institution is certified as an industrial school under this Act, and the rules thereof and all alterations thereof from time to time are approved by the Secretary of State.

Expenses of Prison Authorities, &c.

Expenses of Prison Authorities and County Boards, how defrayed.

50. Expenses incurred by a prison authority in *England* in carrying into effect the provisions of this Act shall be deemed expenses incurred by that authority in carrying into effect the provisions of the Prison Act, 1865, and shall be defrayed accordingly.

Expenses incurred by a county board in *Scotland* in carrying into effect the provisions of this Act shall be a charge on the assessment for current expenses incurred by that board in carrying into effect the provisions of the Prisons (*Scotland*) Administration Act, 1860.

Miscellaneous.

Acts regulating Procedure.

51. The following Acts—

In *England*, the Act of the Session of the eleventh and twelfth years of Her Majesty's reign (chapter forty-three), "to facilitate the "Performance of the Duties of Justices of the Peace out of "Sessions, within *England* and *Wales*, with respect to summary "Convictions and Orders," and any Acts amending the same;

In *Scotland*, The Summary Procedure Act, 1864,—

Shall apply to all offences, payments, and orders in respect of which jurisdiction is given to Justices or a Magistrate by this Act, or which are by this Act directed to be prosecuted, enforced, or made in a summary manner or on summary conviction.

Use of Forms in Schedule.

52. No summons, notice, or order made for the purpose of carrying into effect the provisions of this Act shall be invalidated for want of form only; and the forms in the Schedule to this Act annexed, or forms to the like effect, may be used in the cases to which they refer, with such variations as circumstances require, and when used shall be deemed sufficient.

Service of Notices on Managers.

53. Any notice may be served on the managers of a certified industrial school by being delivered to any one of them personally, or by being sent by post or otherwise in a letter addressed to them or any of them at the school, or at the usual or last known place of abode of any of the managers, or of their secretary.

Application of Act to existing Certified Schools.

54. This Act shall apply to all certified industrial schools being such at the passing of this Act, and to all children sent thereto before the passing of this Act, but no child shall be detained at any industrial school, in pursuance of any order made before the passing of this Act, for a longer period than he would have been liable to be detained if this Act had not been passed.

The FIRST SCHEDULE.

ACTS REPEALED.

24 & 25 Vict. c. 113.	The Industrial Schools Act, 1861.
24 & 25 Vict. c. 132.	The Industrial Schools (Scotland) Act, 1861.
25 & 26 Vict. c. 10.	An Act for continuing for a further limited time, and for extending the Operation of Orders made under the Industrial Schools Act, 1861, and the Industrial Schools (Scotland) Act, 1861.

The SECOND SCHEDULE.

FORMS.

(A.)

ORDER SENDING CHILD TO INDUSTRIAL SCHOOL.

to wit. } BE it remembered, that on the day of , in pursuance of The Industrial Schools Act, 1866, we, two of Her Majesty's Justices of the Peace for the said [*county*] of , do order that *A.B.* of (whose religious persuasion appears to us to be), being a child subject to the provisions of section of the said Act, be sent to the certified industrial school at , and that he be detained there during .

(Signed) *L.M.*
N.O.

(H.)

ORDER IN SCOTLAND ON PARENT FOR PAYMENT TOWARDS MAINTENANCE OF CHILD.

The Sheriff [*or as the case may be*] having considered the complaint of *E.F.*, the inspector of industrial schools, made under the Industrial Schools Act, 1866, and having heard parties thereon [*or* in absence of *C.D.*, *designing him*, duly cited, but not appearing], pursuant to the said Act, decerns *C.D.* complained on, weekly and every week from the day of to pay to the said *E.F.*, or to his agent from time to time authorised to receive the same, the sum of shillings for the maintenance and training of *A.B.*, son [*or as the case may be*] of the said *C.D.*, now detained in the certified industrial school of under an order by of date until the said child attains the age of sixteen years or is lawfully discharged from the said school, and grants warrant of arrestment to be executed by any constable or messenger at arms.

Given under my hand this day of at in the county aforesaid.

Magistrate's Signature.]

The following clause in the Prisons (Scotland) Act, 1877, (40 & 41 Vict. c. 53) empowers Commissioners of Supply and Magistrates to contribute to Reformatories or Industrial Schools.

Commissioners of Supply of Counties, or Magistrates of Burghs, may contribute to Reformatories or Industrial Schools. 17 & 18 *Vict. c.* 86. 29 & 30 *Vict. c.* 118.

67. The Commissioners of Supply of any county or the magistrates of any burgh may resolve to contribute to any reformatory or industrial school in any part of Scotland which has been certified by one of Her Majesty's Principal Secretaries of State in terms of an Act passed in the seventeenth and eighteenth years of Her present Majesty, entituled "An Act for the better Care and Reformation of Youthful Offenders in "Great Britain," or the Industrial Schools Act, 1866, or any Act amending the same, and on such resolution, stating the name of the reformatory or industrial school to which they propose to contribute, being transmitted to the Secretary of State for the Home Department, being one of Her Majesty's Principal Secretaries of State, he shall intimate whether he approves or disapproves of such resolution; and if he intimate that he approves thereof, such commissioners or magistrates may from time to time pay over such sum as they may think fit to the directors and managers of such reformatory or industrial school, and such sum shall be a charge on the county general assessment, or on any municipal or police or other assessment of any burgh, as the case may be: Provided that, if at any time such Secretary of State shall notify his withdrawal of such his approval, it shall no longer be lawful for the commissioners or magistrates to contribute to such reformatory or industrial school.

IV.

HIGHLAND SCHOOLS (SCOTLAND) ACT, 36 & 37 Vict. c. 53.

An Act to make better provision respecting certain sums payable to Schoolmasters of Highland Schools under the Act of the session of the first and second years of the reign of Her present Majesty, chapter eighty-seven, intituled "An Act to facilitate the founda- "tion and endowment of additional Schools in Scotland."—[28th July 1873.]

1 & 2 *Vict. c.* 87.

Whereas in pursuance of the Act of the session of the first and second years of the reign of Her present Majesty, chapter eighty-seven, intituled, "An Act to facilitate the foundation and endowment of "additional Schools in Scotland," (in this Act referred to as the Highland Schools Act, 1838,) the Commissioners of Her Majesty's

Treasury (hereafter referred to as the Treasury), have purchased twenty-four thousand six hundred and sixty-six pounds ten shillings and fourpence three per cent. consolidated bank annuities in the names of their nominees:

35 & 36 *Vict. c.* 62.

And whereas at the passing of the Education (Scotland) Act, 1872, there was payable in pursuance of the Highland Schools Act, 1838, out of the dividends of the said bank annuities, to the schoolmaster appointed in each of the parishes specified in the first column of the schedule to this Act, the annual sum set opposite to the name of such parish in the second column of that schedule, and the dividends of the said bank annuities are insufficient to pay such annual sums, but such insufficiency could have been supplied under the Highland Schools Act, 1838, if the same had not been repealed:

35 & 36 *Vict. c.* 62.

And whereas by the Education (Scotland) Act, 1872, the Highland Schools Act, 1838, was repealed in general terms, subject to the following proviso: "Provided that any sum payable to a schoolmaster prior "to the passing of this Act under the Act of the first and second years "of the reign of Her present Majesty, chapter eighty-seven, shall con- "tinue to be paid to him so long as he holds the office of schoolmaster "on account of which such sum was payable to him, and shall there- "after be paid to the school board of the parish in which he held such "office for the purposes of the school fund," but no provision was made for the disposal of the said bank annuities or for meeting the said insufficiency of the dividends thereof to pay the said sums:

35 & 36 *Vict. c.* 62.

And whereas by the Education (Scotland) Act, 1872, the school board was substituted for the heritors in every parish:

And whereas it is expedient expressly to repeal the Highland Schools Act, 1838, and make such provision respecting the said bank annuities and annual sums as herein-after contained:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short Title.

1. This Act may be cited as the Highland Schools Act, 1873.

Endowment Schools.

Charge of Sums in Schedule on Consolidated Fund, and Payment thereof to School Board.

2. The annual sums mentioned in the schedule to this Act shall, after the passing of this Act, be charged on the Consolidated Fund of

the United Kingdom, and the Treasury shall by equal half-yearly payments in every year pay out of the Consolidated Fund or the growing produce thereof, to the school board of every parish named in the first column of the schedule to this Act, for the purposes of the school fund, the annual sum which in the second column of that schedule is placed opposite to the name of such parish.

Temporary Provisions and Repeal.

Provision for existing Schoolmasters and other past Transactions, and Day of First Payment. 1 & 2 *Vict. c.* 87.

3. So long as any schoolmaster to whom any of the annual sums mentioned in the schedule to this Act was at the passing of this Act payable in pursuance of the Highland Schools Act, 1838, continues to hold his office, the school board shall pay to him every half-yearly payment of that annual sum as soon as may be after they receive the same.

Such portion of the said annual sums as before the passing of this Act the dividends on the said consolidated bank annuities have been insufficient to pay shall be deemed to have been charged, since the passing of the Education (Scotland) Act, 1872, on the Consolidated Fund, and shall be paid or repaid out of the same or out of the growing produce thereof.

The first half-yearly payment of the said annual sums in pursuance of this Act shall be made on the eleventh day of November one thousand eight hundred and seventy-three.

Cancellation of Consols invested under 1 & 2 *Vict. c.* 87.

4. As soon as may be after the passing of this Act, the Treasury shall by warrant direct the Governor and Company of the Bank of England to transfer all the consolidated three per cent. bank annuities standing in the books of the said governor and company in the names of the nominees of the Treasury in pursuance of the Highland Schools Act, 1838, to the Commissioners for the Reduction of the National Debt, and on the said transfer being made, to cancel the same, and thereupon the Governor and Company of the Bank of England shall cause such sums of bank annuities to be transferred and cancelled by one of their officers, and any dividends which at the time of the transfer may be due on such bank annuities shall be applied in payment of the annual sums mentioned in the schedule to this Act.

1 & 2 *Vict. c.* 87, *and s.* 78 *of* 35 & 36 *Vict. c.* 62, *repealed.*

5. The Highland Schools Act, 1838, and section seventy-eight of the Education (Scotland) Act, 1872, from the words "and provided that "any sum payable to a schoolmaster," inclusive, to the end of that section, are hereby repealed.

SCHEDULE.

Annual Sums payable at the passing of 35 & 36 Vict. c. 62, to the Schoolmasters of the Parishes named below under 1 & 2 Vict. c. 87.

Parish.	Annual Sum. £	s.	d.	Parish.	Annual Sum. £	s.	d.
1. Acharacle	34	0	0	17. Oa	30	0	0
2. Balligrant	34	0	0	18. Ownich	30	0	0
3. Croick	28	0	0	19. Portnahaven	30	0	0
4. Cross	25	0	0	20. North Ronaldshay	30	0	0
5. Dunbeath	28	0	0	21. Rannoch	30	0	0
6. Duror	20	0	0	22. Salen	30	0	0
7. Dunskellar	34	0	0	23. Stenchol	30	0	0
8. Foss	32	0	0	24. Stoer	30	0	0
9. Insh	34	0	0	25. Strathy	25	0	0
10. Iona	32	0	0	26. Strontian	30	0	0
11. Keanlochbervie	34	0	0	27. Tobermory	34	0	0
12. Keiss	30	0	0	28. Tomintoul	30	0	0
13. Kinlochluichart	30	0	0	29. Ullapool	32	0	0
14. Kinlochspelvie	20	0	0	30. Ulva	25	0	0
15. Laid or Poolewe	34	0	0				
16. Lochgilphead	34	0	0	Total	899	0	0

V.

FREE CHURCH OF SCOTLAND SCHOOL PROPERTIES ACT,

41 & 42 Vict. c. ccxx.

An Act to authorise the application to other educational purposes, or the sale or letting, of School-houses and other School Properties held on behalf of Congregations of the Free Church of Scotland; and for other purposes.—[8th August 1878.]

Whereas by an act of the General Assembly of the body of Christians calling themselves the Free Church of Scotland (herein-after called "the "Free Church," dated the twenty-ninth day of May, one thousand eight hundred and forty-three, the Assembly approved of a report of their committee on providing means for the education of students for the ministry and the establishment of a system of schools, and instructed the committee to take immediate steps for the establishment of a school in connexion with every congregation:

And whereas large sums of money were from time to time contributed and have been expended for the purpose of promoting the establishment of schools in connexion with the respective congregations of the Free Church; and numerous schoolhouses, schoolmasters' houses, and other school properties now belong to or are held in lease for behoof of those congregations:

And whereas the Education Committee of the Free Church prepared the draft of a deed, which is generally known as "the model trust-deed "for schools," to be embodied or referred to in the disposition, feu-charter, or other conveyance or lease of the ground or site acquired for the erection of such schoolhouses:

And whereas the titles to many of the said school properties have been taken in terms of the model trust-deed for schools; and certain other of such school properties are held under titles taken in terms of another deed, the draft of which was prepared by direction of and approved by the General Assembly of the Free Church, which deed is generally known as "the model trust-deed for churches;" and certain other of the said school properties are held under titles granted under powers contained in the Act 3 and 4 Victoria, chapter 48, intituled "An Act to enable proprietors of entailed estates in Scotland to feu or "lease on long leases portions of the same for the building of churches "and schools, and for dwelling-houses and gardens for the ministers "and masters thereof" (herein-after called "the Act of 1840,") and in the Act 4 and 5 Victoria, chapter 38, intituled "An Act to afford "further facilities for the conveyance and endowment of sites for "schools" (herein-after called "the Act of 1841"):

35 & 36 *Vict. c.* 62.

And whereas the Education (Scotland) Act, 1872 (herein-after called "the Education Act,") was passed "to amend and extend the pro-"visions of the law of Scotland on the subject of education:"

And whereas, under the provisions of the Education Act, a considerable number of the said school properties have been transferred to the school boards of the parishes and burghs within which they are respectively situated; but there remain a considerable number of such school properties which have not been so transferred, and which, in consequence of the passing of the Education Act, are not now required for the purposes for which they were provided:

And whereas it is expedient that, notwithstanding the purposes specified and the terms and conditions contained in the said model trust-deeds and in the aforesaid titles, provision should be made for appropriating to other educational purposes the school properties held under those deeds and titles, and for selling or letting such of the said school properties as may not be so appropriated, and for applying the prices and rents received for the same, but subject always to the provisions herein-after contained:

And whereas the objects aforesaid cannot be effected without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons

in this present Parliament assembled, and by the authority of the same, as follows :

Short Title.

1. This Act may be cited for all purposes as the Free Church of Scotland School Properties Act, 1878.

Interpretation of Terms.

2. In this Act the following words and expressions shall have the meanings hereby assigned to them respectively, unless there be something in the subject or context repugnant to such construction; (that is to say,)

"School property" or "school properties" shall mean and include schoolhouses, schoolmasters' houses, land held and used in connexion therewith, and other appurtenances thereof, and the furniture and fittings of the same, whether the site thereof be held in property or in lease :

"General Assembly" shall mean the General Assembly of the Free Church :

"Deacons court" shall mean and include the office-bearers, being the minister, elders, and deacons, or elders acting as deacons, in each congregation :

"Guardian" shall include tutors and curators of pupils or minors, or of persons labouring under incapacity or disability, factors loco tutoris and factors loco absentis, and husbands.

Power to appropriate School Properties to other Educational Purposes.

3. The deacons court of each congregation of the Free Church for whose behoof or in connexion with which any school property is held may, with the consent of the General Assembly (certified under the hands of the moderator and clerk of the General Assembly sitting at the time or of the immediately preceding General Assembly, or under the hands of the persons generally known or understood to hold these offices), appropriate such school property, or any part thereof, to such educational uses, including Sabbath schools, libraries, lectures, &c., in connexion with such congregation, as such deacons court may think fit; and the same may be used accordingly, notwithstanding any restrictions or conditions with respect to the use or reversion or forfeiture thereof contained or referred to in the titles under which it is held : Provided always, that any portion of such school property erected or used for the purpose of a dwelling-house may continue to be used as such, subject to the proviso that in the case of any school property held by a title granted under the powers of the Act of 1840[1] or of

[1] The first School Site Act (3 & 4 Vict. c. 48) enables heirs of entail to fen or let, *inter alia*, parcels of land not exceeding one-eighth of an acre for a dwelling-house for a schoolmaster, and not exceeding one acre for any schoolhouse and playground attached thereto, with half an acre for the garden attached to the dwelling-house. The Act declares that, on recording the original title, no further transference or renewal of title shall be required, the trustees being bound not to convey the subjects or burden them with debt, or to divert the property or buildings thereon, to any different purposes; and in the event of a diversion,

the Act of 1841,[1] such continued use thereof as a dwelling-house shall not be exercised without the consent of the granter of such title, or of his successor in possession at the time of the estate of which such property or the site thereof originally formed part.

Power to Sell or Let School Properties.

4. If the deacons court of the congregation for whose behoof or in connexion with which any school property is held, or the General Assembly, shall consider that such school property cannot be, or at any time has ceased to be, beneficially appropriated to educational uses as aforesaid, or may with greater advantage be sold or let for other purposes, such deacons court may with the consent of the General Assembly, certified in manner herein-before provided but always subject to the provisions herein-after contained, sell at the highest price which can be obtained such school property, or any part thereof, in such manner as they shall consider most expedient, and either by public roup or private bargain, and thereupon the trustees or other persons or person in whose names or name such school property is vested may convey or assign the same to the purchaser; or such deacons court, with consent aforesaid, may from time to time let the same at the highest rent which can be safely obtained, for such period and on such terms and conditions as they shall think proper, and they shall hold or apply the free proceeds of the sale of such school property, if sold, or the proportion thereof falling to such congregation as herein-after

or of the property lying unemployed for five years, the heir of entail may prove this fact before the sheriff and obtain a forfeiture of the feu-charter or lease, any inhabitant of the parish, or other district benefited by the school, being entitled to be heard before the sheriff. The grants under this Act were made sometimes to the Presbytery and sometimes to private bodies of trustees.

[1] The second School Site Act (4 & 5 Vict. c. 38) enables proprietors and heirs of entail to grant, sell, or lease parcels of land not exceeding, for each *quoad sacra* parish (see 14 & 15 Vict. c. 24), one acre as a site for a school for the education of poor persons, or for the residence of the schoolmaster or mistress, or otherwise for the education of such poor persons in religious and useful knowledge. The Act declares that on discontinuance of use the land should revert to the granter's estate. The grant may be made to the minister and kirk-session, in whom and their successors the title will remain permanently, though the management of the school may be in terms of the grant elsewhere. The form of conveyance provided declares that the land is to be held and used for the purposes of the Act, "and for no other purpose whatever," and explains the manner in which, and the persons by whom, the trust is to be managed. Registration of this within sixty days of its date in an appropriate Register of Sasines is declared to make the title absolute without sasine. The trustees of the site are empowered, with consent of the school managers (and of the Home Secretary where there has been a Parliamentary grant), to sell or exchange the site for one more convenient or eligible. [The following portions of the Act of 1841 were repealed by the Statute Law Revision Act, 1874 (No. 2), 37 & 38 Vict. c. 96—viz., sections 1, 4, 16, 23, and 22 from "an Act passed" to "Scotland or."] The terms and conditions with regard to inspection which the Committee of Council on Education have annexed to grants for building, purchase of sites, &c., are by the School Sites Act, 1844 (7 & 8 Vict. c. 37) declared to be binding on trustees and managers, though not inserted in the conveyance or in the declaration of trusts, provided they are set out in writing signed by the trustees, or by the grantors where the grant is gratuitous.

mentioned, and the free rents of such school property, if let, in the manner herein-after provided.

For protection of Proprietors of Estates of which sites of School Properties originally formed part.

5. Provided always, that in any case where the school property intended to be sold or let as aforesaid, or the site thereof, is held by a title under which, either by reference to the Act of 1840 or to the Act of 1841, or otherwise than by incorporation of or reference to the terms and conditions of the said model trust-deeds, the use of such school property is restricted, or any right therein is reserved to the person from whom such school property or site was acquired or to his successors, in the event of the same being used otherwise than for the purposes for which it was acquired, or ceasing to be used for these purposes, the deacons court of the congregation for whose behoof or in connexion with which such school property is held shall, before selling or letting the same, give notice in writing of their intention to such person, or to his successor in possession at the time of the estate of which such school property or site originally formed part. After receiving such notice such person, or his successor in possession at the time of such estate, may intimate to the deacons court either (1) his desire to purchase the said school property; or (2) his consent to the same being sold or let by the deacons court subject to any terms and conditions which he may think fit. In the event of his intimating his desire to purchase the school property, the value thereof at the time shall be ascertained by agreement, or (failing agreement) by an arbiter to be mutually agreed upon by the parties, or (if they do not agree upon an arbiter) to be appointed, on the application of either party, by the sheriff-depute of the county in which the same is situate, and shall be paid by the purchaser to the deacons court, with interest from the date of the purchaser's entry. All the expenses of such arbitration and incident thereto, to be settled by such arbiter, shall be borne by the deacons court, unless the arbiter shall award a larger sum than shall have been previously offered by the purchaser, in which case he and the deacons court shall respectively bear his and their own expenses incident to the arbitration, but in all cases the expenses of the arbiter shall be borne by the deacons court. Unless and until one or other of such intimations is made to the deacons court such school property shall not be sold or let; and in the event of no such intimation being made within six months after such notice in writing by the deacons court as aforesaid, all the restrictions and conditions with respect to the use or reversion or forfeiture thereof contained or referred to in the titles under which it is held shall remain in full force and effect.

Restrictions as to Use of School Properties not to apply where imposed only by model Trust-deeds, or where Heir in Possession consents to Sale or Lease.

6. Where any school property is held under a title containing no restrictions with respect to the use thereof otherwise than by incorporation of or reference to the terms and conditions of the said model trust-deeds, or where the person in possession at the time of the estate

of which any school property originally formed part has consented to such school property being sold or let by the deacons court of the congregation for whose behoof or in connexion with which it is held, such school property may be sold or let in the manner herein-before provided, and shall be held free and disburdened from any restrictions with respect to the use thereof, and from any provisions for reversion or forfeiture of the same to or in favour of the proprietor of the estate of which the same originally formed part, contained in or provided by the titles under which such school property is held, or the Act of 1840, or the Act of 1841, but such school property shall nevertheless be subject to any terms and conditions which may be agreed to between the deacons court and the person in possession at the time of such estate.

Consents may be given by Heirs of Entail, &c.

7. It shall be lawful for heirs of entail in possession for the time being of estates of which any school properties originally formed part, if of lawful age, and for the guardians of such heirs of entail or of other proprietors of such estates, if such heirs or proprietors be in pupillarity or minority or under any other legal disability, and for trustees and other persons holding limited interests in such estates, to consent as aforesaid to any sales or leases of such school properties; and for the purposes of this Act such heirs of entail, guardians, trustees, and other persons holding limited interests in such estates, shall be deemed the proprietors thereof.

Restriction as to Sales of School Properties to which Government Grants have been made.

8. Where any grant has been made out of any money voted by Parliament for the purposes of education in Great Britain, under the advice of any Committee of the Council on Education, for or towards the purchase of the site, or the erection, enlargement, or repair of any schoolhouse, or of the residence of the master or mistress thereof, or the furnishing of such schoolhouse or residence, nothing contained in this Act shall render valid any sale of the premises in respect of which such grant has been made, unless either the consent of the Secretary of State for the Home Department for the time being in writing under his hand be given to the same, or the amount of the grant made as aforesaid be repaid to the Lords Commissioners of the Treasury for the time being.

As to Division of Proceeds of Sale.

9. Where any part of the original cost of the purchase, erection, or furnishing of any school property which shall be sold under the powers of this Act shall have been contributed by the General Assembly, the free proceeds of the sale of such school property, after deducting the reasonable expenses of and consequent upon the sale and any sum which under the provisions herein-before contained may be repaid to the Lords Commissioners of the Treasury in respect of any grant made with relation to such school property, shall, in cases where such free proceed shall not amount to the aggregate sums contributed by the

General Assembly and by the congregation for whose behoof or in connexion with which such school property is held respectively, be divided between the General Assembly and the deacons court of such congregation, in proportion to the respective amounts contributed towards such cost by the General Assembly on the one hand and by such congregation on the other hand; and in cases where such free proceeds shall amount to or exceed the aggregate sums contributed by the General Assembly and by such congregation respectively, such free proceeds shall be applied in the first place in payment to the General Assembly of the sum contributed by them, and the balance shall be paid over to the deacons court of such congregation; such cost, except in so far as defrayed out of any grant made as aforesaid or contributed by the General Assembly being in all cases held to have been contributed by such congregation; and where no part of such cost was contributed by the General Assembly such free proceeds shall be paid over to such deacons court; and no subscriber or contributor (other than the General Assembly), whether by gift, bequest, or otherwise, of sums employed in the purchase, erection, enlargement, furnishing, repair, or maintenance of any school property, nor the heirs or representatives of any such subscriber or contributor, shall have any concern or interest in the proceeds of the sale of any of the said properties if sold, or in the rents or use thereof when not sold; and no such subscriber or contributor (other than the General Assembly), nor the heirs or representatives of any such subscriber or contributor, and no purchaser or lessee of any school property, shall have any concern or interest in the application of such proceeds of sale or rents.

Application of Proceeds of Sale and Rents.

10. The portions of the free proceeds of sale received by the General Assembly as aforesaid shall be applied by them towards such of the following purposes, in relation to educational interests in connexion with the Free Church, as they may appoint; that is to say, towards the granting of pensions or allowances to retired teachers (so far as the same are not paid by deacons courts as herein-after provided), the support of normal schools, the payment of fees of normal school students attending universities or colleges, the foundation of scholarships or bursaries, or the establishment or maintenance of a school or schools. The free proceeds or portions of free proceeds of sale and the rents received by each deacons court as aforesaid shall be applied by them towards such purposes as aforesaid, in connexion with their congregation or with the Free Church, as may be sanctioned by the General Assembly, or towards the establishment and maintenance of a Sabbath school or Sabbath schools, and of a library where deemed expedient, or for school prizes: Provided always, that if there shall be a retired teacher of a school attached or which may have been attached to such congregation to whom the General Assembly shall have granted a pension or allowance, the payment thereof shall, to such extent as may be agreed upon between the General Assembly and such deacons court, form a primary charge on the sums received by such deacons court as aforesaid: Provided also, that no part of the capital sums arising from the free proceeds of sale of school properties shall be applied

to any of the aforesaid purposes except the establishment of schools or libraries; but, except so far as applied to the last-mentioned purposes, such capital sums shall be invested by the General Assembly or the respective deacons courts, as the case may be, upon deposit in any bank carrying on business in Great Britain and incorporated under Act of Parliament or by Royal charter, or upon heritable security, or in the purchase of Government stocks, Exchequer bills, feu-duties, or ground-annuals, or of mortgages, debentures, debenture stock, or guaranteed or preference shares or stock of any company carrying on business in Great Britain incorporated by Act of Parliament and paying dividend on their ordinary share capital, or of any dock, harbour, or navigation trust, or municipal authority in Great Britain; and the interest or other annual income of such capital sums may be applied to any of the purposes herein-before specified.

General saving.

11. Nothing contained in this Act shall be construed as requiring the application to educational purposes of any school properties, or of the proceeds of sale or rents of any school properties, held under titles which do not require the same to be used for such purposes, nor as requiring the consent of the General Assembly to the exercise with respect to any school property of any power of sale or letting or application which could, previously to the passing of this Act, have been exercised without such consent.

Not to affect ss. 37-39 *of* 35 *&* 36 *Vict. c.* 62.

12. Nothing contained in this Act shall affect the provisions contained in the thirty-seventh, thirty-eighth, and thirty-ninth sections of the Education Act.

Expenses of Act.

13. The costs, charges, and expenses of and incident to preparing for, obtaining, and passing this Act, or otherwise in relation thereto, shall be paid in the first instance by the General Assembly, who may charge the same upon the proceeds of the sales of school properties, when realised by the several deacons courts, in such proportions as the General Assembly may consider just.

VI.

ENDOWED INSTITUTIONS (SCOTLAND) ACT, 41 & 42 VICT. c. 48.

An Act to amend the Law relating to Endowed Schools and Hospitals and other Endowed Institutions in Scotland; and for other purposes.—[8th August 1878.]

Whereas there are numerous endowed schools and hospitals and other endowed institutions in Scotland, and it is expedient that provision should be made to enable the governors, managers, trustees, or other governing body thereof to apply for and obtain from Parliament power and authority whereby changes may be made in the government and management of the said schools, hospitals, and institutions, or in the application of their endowments, and at the same time provision may be made for upholding the standard of education which has hitherto been maintained in Scotland:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short Title.

1. This Act may be cited as the Endowed Institutions (Scotland) Act, 1878.

Application of Act.

2. This Act shall apply to Scotland only.

Interpretation of Terms.

3. In this Act, unless the context otherwise requires, the following words and expressions have the meanings hereby assigned to them; viz.,

"Secretary of State" means any one of Her Majesty's Principal Secretaries of State:

"Governing body" includes governors, managers, trustees, school boards, or other person or persons, corporate or unincorporate, having, otherwise than as teacher or master, the right of holding any endowment, or any power of government of or management over any endowed institution:

"Endowed institution" means a school, hospital, or other institution wholly or partly maintained by means of any endowment, and includes a mortification or bequest for educational or charitable uses, or for uses partly educational and partly charitable, or for the establishment or maintenance of a public library:

"Endowment" means any description of property, heritable or moveable, which is dedicated to educational, literary, or charitable uses, or to uses partly educational and partly charitable, or for the establishment, management, and maintenance of a public library, in whomsoever such property may be vested, in whosesoever name it may be standing, or by whatsoever tenure or title it may be held:

"Scotch Education Department" means the Lords of the Committee of the Privy Council on Education in Scotland:

"The Commissioners" means the Commissioners herein-after appointed, and "Commissioner" means one of such Commissioners.

Governing Body may resolve to apply for a Provisional Order.

4. It shall be lawful for the governing body of any endowed institution in Scotland, at a meeting specially called for the purpose at a month's notice, to resolve, by a majority of those present at the meeting, that it is expedient that provision should be made for the better government and administration of such institution, or for the better application of the endowments thereof, or for the transference of such institution and the endowments thereof, and that an application should be made to the Secretary of State for a provisional order.

Governing Body may present Petition to Secretary of State.

5. On the foresaid resolution being carried, it shall be lawful for the said governing body to present a petition to the Secretary of State, setting out such resolution, and stating the provisions for the better government and administration of such institution, or the better application of the endowments thereof, which they desire to have sanctioned. Upon receipt of any such petition as aforesaid the Secretary of State may, if he shall think fit, direct such petition to be published in the Edinburgh Gazette in two consecutive numbers thereof, and in one or more newspapers circulating in the county or counties where such institution is situated, with a view to further inquiry.

Commissioners may Inquire and Report to Secretary of State.

6. The Secretary of State may, if he shall think fit, by writing under his hand, remit[1] to the Commissioners herein-after mentioned, to inquire into the said petition and report thereon to the said Secretary of State; and for the purposes of such inquiry, which shall be held in public, the said Commissioners shall have power, after such public notice as they may think sufficient, to examine witnesses on oath, and to call for such information from, and to require the production of such documents by, the governing body, or any other persons, as they may consider necessary, and to do all such matters and things as may seem to them expedient for the purposes of the inquiry. After the holding of such inquiry the Commissioners shall report to the Secretary of State as to whether, in their opinion, the provisional order prayed for should be made, and if so, with what, if any, alterations or modifications therein.

[1] The petition of the Trustees of Spier's Institute, Ayrshire, has been remitted to the Commissioners.

Power to Secretary of State to issue Provisional Order.

7. It shall be lawful for the Secretary of State to issue a provisional order in relation to the several things mentioned in the foresaid petition, either in accordance therewith, or with such alterations or modifications, not being inconsistent with the general principles thereof, as may appear to him to be requisite, or otherwise to refuse to issue such provisional order.

Provided always, that in every such provisional order provision shall be made for saving or making due compensation for the vested interests to which any teacher, master, officer, scholar, bursar, exhibitioner, pensioner, or other shall be entitled at the date of such order.

Provided also, that if the provisional order shall contain any alterations or modifications as aforesaid, the Secretary of State shall before signing the order cause a copy of it to be sent to the governing body, who may, if they think fit, state in writing to the Secretary of State any objections or suggestions respecting such order within one month after the copy thereof was sent to the governing body; and the Secretary of State shall, if he think fit, remit to the Commissioners to report on such objections and suggestions, and shall consider the same together with the report of the Commissioners.

Provisional Order to be laid before Parliament.

8. The provisional order aforesaid shall not have any effect or operation unless and until the same has been laid before both Houses of Parliament; and it shall be lawful for the Secretary of State, and he is hereby required, as soon as conveniently may be, to cause such provisional order to be laid before both Houses of Parliament; and after such provisional order has lain forty days before Parliament, then, unless within such forty days a resolution has been adopted by one or other of the said Houses disapproving of the said order, such provisional order shall come into operation.

Several Governing Bodies may concur in applying for Provisional Order.

9. It shall be lawful for the governing bodies of two or more endowed institutions to concur in applying for a provisional order under this Act, and such order may provide for the union of such institutions or for the application of their endowments or part thereof under a governing body to be constituted by such order.

Governing Body may apply for Transference of Endowments.

10. It shall be lawful for the governing body of an endowed institution to apply for a provisional order, and such order may provide for the transference of the institution and the endowments of such institution or part thereof to the governing body of one or more other endowed institutions, or to one or more school boards, subject to the provisions contained in such order.

Commissioners to submit Conditions of Distribution of Parliamentary Grant with view to Promotion of Higher Education.

11. The Commissioners shall submit for the consideration of the Scotch Education Department the conditions according to which, in their opinion, the parliamentary grant for public education in Scotland may be most advantageously distributed for the purpose of promoting education in the higher branches of knowledge in public and State-aided schools, especially in those districts in which there are no higher-class public schools: Provided always, that the duty of determining from time to time the rates and conditions according to which the said grants may be given, and of framing, and from time to time revising the minutes containing the same, shall be upon the Scotch Education Department.[1]

Commissioners to be appointed.

12. For the purposes of this Act it shall be lawful for Her Majesty from time to time, on the recommendation of the Secretary of State, to appoint Commissioners to hold office during Her Majesty's pleasure, but the number of such Commissioners shall not at any one time exceed seven.[1]

The office and general place of business of the Commissioners shall be in Edinburgh; but the Commissioners may from time to time appoint any one or more of their number to hold an inquiry in terms of this Act, and to visit such places as may be necessary for that purpose. Any Commissioner or Commissioners so appointed shall have and may exercise all the powers of the Commissioners, except that of reporting to the Secretary of State.

Her Majesty may, on the recommendation of the Secretary of State, from time to time appoint a fit person to be secretary to the Commissioners, to hold office at Her Majesty's pleasure; and the Commissioners may appoint such necessary clerks and officers as shall be sanctioned by the Commissioners of Her Majesty's Treasury to hold office during the pleasure of the Commissioners.

The Commissioners of Her Majesty's Treasury may assign to the secretary, clerks, and officers such salaries as they may think proper.

The salaries paid under this Act, together with the whole expenses of the Commissioners and of their establishment, and reasonable travelling expenses, shall be defrayed out of moneys to be voted by Parliament.

Provided that such Commissioners shall receive no remuneration except for such reasonable travelling or other expenses as may be incurred in the discharge of their duties under this Act.

[1] On 22d August 1878 the following Commissioners were appointed by the Queen in Council, viz.:—The Right Honourable James, Baron Moncreiff, Lord Justice-Clerk; the Right Honourable Alexander Hugh, Baron Balfour of Burleigh; Sir James Watson, Kt.; John Ramsay, Esq.; James Alexander Campbell, Esq., LL.D.; Peter Guthrie Tait, Esq., D.Sc., Professor of Natural Philosophy in the University of Edinburgh; and James Donaldson, Esq., LL.D., Rector of the Royal High School of Edinburgh. Her Majesty was also pleased to appoint George R. Gillespie, Esq., Advocate, to be Secretary to the Commissioners. Office—32 Queen Street, Edinburgh.

Commissioners to Report.

13. The Commissioners shall once in each year make a report to Her Majesty of their proceedings under this Act during the past year, and such report shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament is then sitting, and if not, then within fourteen days after the next meeting of Parliament.

Saving Powers of Governing Bodies under Special Acts, &c.

14. Nothing herein contained shall be held to limit any of the powers presently enjoyed by any governing body under any Act of Parliament, or provisional order, or charter, or by the foundation grant of the endowed institution under their government.

Commencement and Duration of Act.

15. Save as regards the appointment of Commissioners, which may be made at any time after the passing hereof, this Act shall commence to have effect on the first day of October one thousand eight hundred and seventy-eight, and shall be in force until the thirty-first day of December one thousand eight hundred and eighty: Provided that it shall be lawful for Her Majesty in Council, if special cause be shown, to continue this Act in force with respect to any endowed institution until the thirty-first day of July one thousand eight hundred and eighty-one.

VII.

FACTORY AND WORKSHOP ACT, 41 Vict. c. 16.

An Act to consolidate and amend the Law relating to Factories and Workshops.—[27th May 1878.]

GENERAL LAWS RELATING TO FACTORIES AND WORKSHOPS.

(3.) Employment and Meal Hours.

Period of Employment of Children, Young Persons, and Women.

10. A child, young person, or woman shall not be employed in a factory or a workshop except during the period of employment herein-after mentioned.

Period of Employment, &c., for Young Persons and Women in a Textile Factory.

11. With respect to the employment of young persons and women in a textile factory the following regulations shall be observed:

(1.) The period of employment, except on Saturday, shall either begin at six o'clock in the morning and end at six o'clock

in the evening, or begin at seven o'clock in the morning and end at seven o'clock in the evening; and

(2.) The period of employment on Saturday shall begin either at six o'clock or at seven o'clock in the morning; and

(3.) Where the period of employment on Saturday begins at six o'clock in the morning, that period—

(*a.*) If not less than one hour is allowed for meals, shall end at one o'clock in the afternoon as regards employment in any manufacturing process, and at half-past one o'clock in the afternoon as regards employment for any purpose whatever; and

(*b.*) If less than one hour is allowed for meals, shall end at half an hour after noon as regards employment in any manufacturing process, and at one o'clock in the afternoon as regards employment for any purpose whatever; and

(4.) Where the period of employment on Saturday begins at seven o'clock in the morning, that period shall end at half-past one o'clock in the afternoon as regards any manufacturing process, and at two o'clock in the afternoon as regards employment for any purpose whatever; and

(5.) There shall be allowed for meals during the said period of employment in the factory—

(*a.*) On every day except Saturday not less than two hours, of which one hour at the least, either at the same time or at different times, shall be before three o'clock in the afternoon; and

(*b.*) On Saturday not less than half an hour; and

(6.) A young person or woman shall not be employed continuously for more than four hours and a half, without an interval of at least half an hour for a meal.

Period of Employment for Children in Textile Factory.

12. With respect to the employment of children in a textile factory the following regulations shall be observed—

(1.) Children shall not be employed except on the system either of employment in morning and afternoon sets, or of employment on alternate days only; and

(2.) The period of employment for a child in a morning set shall, except on Saturday, begin at the same hour as if the child were a young person, and end at one o'clock in the afternoon, or, if the dinner time begins before one o'clock, at the beginning of dinner time; and

(3.) The period of employment for a child in an afternoon set shall, except on Saturday, begin at one o'clock in the afternoon, or at any later hour at which the dinner time terminates, and end at the same hour as if the child were a young person; and

(4.) The period of employment for any child on Saturday shall begin and end at the same hour as if the child were a young person; and

(5.) A child shall not be employed in two successive periods of seven

days in a morning set, nor in two successive periods of seven days in an afternoon set, and a child shall not be employed on two successive Saturdays, nor on Saturday in any week if on any other day in the same week his period of employment has exceeded five hours and a half; and

(6.) When a child is employed on the alternate day system the period of employment for such child and the time allowed for meals shall be the same as if the child were a young person, but the child shall not be employed on two successive days, and shall not be employed on the same day of the week in two successive weeks; and

(7.) A child shall not on either system be employed continuously for any longer period than he could be if he were a young person without an interval of at least half an hour for a meal.

. . . . . .

Period of Employment for Children in Non-Textile Factory and Workshop.

14. With respect to the employment of children in a non-textile factory and a workshop the following regulations shall be observed:

(1.) Children shall not be employed except either on the system of employment in morning and afternoon sets, or (in a factory or workshop in which not less than two hours are allowed for meals on every day except Saturday) on the system of employment on alternate days only; and

(2.) The period of employment for a child in a morning set on every day, including Saturday, shall begin at six or seven o'clock in the morning and end at one o'clock in the afternoon, or, if the dinner time begins before one o'clock, at the beginning of dinner time; and

(3.) The period of employment for a child in an afternoon set on every day, including Saturday, shall begin at one o'clock in the afternoon, or at any hour later than half-past twelve o'clock at which the dinner time terminates, and end on Saturday at two o'clock in the afternoon, and on any other day at six or seven o'clock in the evening, according as the period of employment for children in the morning set began at six or seven o'clock in the morning; and

(4.) A child shall not be employed in two successive periods of seven days in a morning set, nor in two successive periods of seven days in an afternoon set, and a child shall not be employed on Saturday in any week in the same set in which he has been employed on any other day of the same week; and

(5.) When a child is employed on the alternate day system—

(*a.*) The period of employment for such child shall, except on Saturday, either begin at six o'clock in the morning and end at six o'clock in the evening, or begin at seven o'clock in the morning and end at seven o'clock in the evening; and

(*b.*) The period of employment for such child shall on Saturday begin at six or seven o'clock in the morning, and end at two o'clock in the afternoon; and

(*c.*) There shall be allowed to such child for meals during the said period of employment not less, on any day except Saturday, than two hours, and on Saturday than half an hour; but

(*d.*) The child shall not be employed in any manner on two successive days, and shall not be employed on the same day of the week in two successive weeks; and

(6.) A child shall not on either system be employed continuously for more than five hours without an interval of at least half an hour for a meal.

. . . . . .

Period of Employment and Time for Meals for Children and Young Persons in Domestic Workshop.

16. Where persons are employed at home, that is to say, in a private house, room, or place which, though used as a dwelling, is by reason of the work carried on there a factory or workshop within the meaning of this Act, and in which neither steam, water, nor other mechanical power is used in aid of the manufacturing process carried on there, and in which the only persons employed are members of the same family dwelling there, the foregoing regulations of this Act with respect to the employment of children, young persons, and women shall not apply to such factory or workshop, and in lieu thereof the following regulations shall be observed therein:

(1.) A child or young person shall not be employed in the factory or workshop except during the period of employment hereinafter mentioned; and

(4.) The period of employment for a child on every day either shall begin at six o'clock in the morning and end at one o'clock in the afternoon, or shall begin at one o'clock in the afternoon and end at eight o'clock in the evening or on Saturday at four o'clock in the afternoon; and for the purpose of the provisions of this Act respecting education such child shall be deemed, according to circumstances, to be employed in a morning or afternoon set; and

(5.) A child shall not be employed before the hour of one in the afternoon in two successive periods of seven days, nor after that hour in two successive periods of seven days, and a child shall not be employed on Saturday in any week before the hour of one in the afternoon, if on any other day in the same week he has been employed before that hour, nor after that hour if on any other day of the same week he has been employed after that hour; and

(6.) A child shall not be employed continuously for more than five hours without an interval of at least half an hour for a meal.

Meal Times to be simultaneous, and Employment during Meal Times forbidden.

17. With respect to meals, the following regulations shall (save as in this Act specially excepted) be observed in a factory and workshop:

(1.) All children, young persons, and women employed therein shall

have the times allowed for meals at the same hour of the day; and

(2.) A child, young person, or woman shall not during any part of the times allowed for meals in the factory or workshop, be employed in the factory or the workshop, or be allowed to remain in a room in which a manufacturing process or handicraft is then being carried on.

. . . . . .

Notice fixing Period of Employment, Hours of Meals, and Mode of Employment of Children.

19. The occupier of a factory or workshop may from time to time fix within the limits allowed by this Act, and shall (save as is in this Act specially excepted) specify in a notice affixed in the factory or workshop, the period of employment, the times allowed for meals, and whether the children are employed on the system of morning and afternoon sets or of alternate days.

The period of employment and the times allowed for meals in the factory or workshop shall be deemed to be the period and times specified in the notice affixed in the factory or workshop; and all the children in the factory or workshop shall be employed either on the system of morning and afternoon sets or on the system of alternate days according to the system for the time being specified in such notice:

Provided that a change in such period or times or system of employment shall not be made until after the occupier has served on an inspector and affixed in the factory or workshop notice of his intention to make such change, and shall not be made oftener than once a quarter, unless for special cause allowed in writing by an inspector.

Prohibition of Employment of Children under Ten.

20. A child under the age of ten years shall not be employed in a factory or a workshop.

Prohibition of Employment of Children, Young Persons, and Women on Sunday.

21. A child, young person, or woman shall not (save as is in this Act specially excepted) be employed on Sunday in a factory or workshop.

(4.) HOLIDAYS.

Days to be observed as Holidays, and Half Holidays to be allowed in Factories and Workshops. 38 & 39 *Vict. c.* 13.

22. The occupier of a factory or of a workshop shall (save as is in this Act specially excepted) allow to every child, young person, and woman employed therein the following holidays; that is to say,

(2.) Eight half holidays in every year, but a whole holiday may be allowed in lieu of any two such half holidays; and

(3.) At least half of the said half holidays or whole holidays shall be allowed between the fifteenth day of March and the first day of October in every year; and

(4.) Cessation from work shall not be deemed to be a half holiday, or whole holiday, unless a notice of the half holiday or whole holiday has been affixed in the factory or workshop for at least the whole period of employment of young persons and women on the last previous work day but one; and

(5.) A half holiday shall comprise at least one half of the period of employment for young persons and women on some day other than Saturday.

A child, young person, or woman who—

(*a.*) On a whole holiday fixed by or in pursuance of this section for a factory or workshop is employed in the factory or workshop, or

(*b.*) On a half holiday fixed in pursuance of this section for a factory or workshop is employed in the factory or workshop during the portion of the period of employment assigned for such half holiday,

shall be deemed to be employed contrary to the provisions of this Act.

If in a factory or workshop such whole holidays or half holidays as required by this section are not fixed in conformity therewith, the occupier of the factory or workshop shall be liable to a fine not exceeding five pounds.

(5.) Education of Children.

Attendance at School of Children employed in a Factory or Workshop.

23. The parent of a child employed in a factory or in a workshop shall cause that child to attend some recognised efficient school (which school may be selected by such parent), as follows:

(1.) The child, when employed in a morning or afternoon set, shall in every week, during any part of which he is so employed, be caused to attend on each work day for at least one attendance; and

(2.) The child, when employed on the alternate day system, shall on each work day preceding each day of employment in the factory or workshop be caused to attend for at least two attendances:

(3.) An attendance for the purposes of this section shall be an attendance as defined for the time being by a Secretary of State with the consent of the Education Department, and be between the hours of eight in the morning and six in the evening:

Provided that—

(*a.*) A child shall not be required by this Act to attend school on Saturday or any holiday or half holiday allowed under this Act in the factory or workshop in which the child is employed; and

(*b.*) The non-attendance of the child shall be excused on every day on which he is certified by the teacher of the school to have been prevented from attending by sickness or other unavoidable cause, also when the school is closed during the ordinary holidays or for any other temporary cause; and

(*c.*) Where there is not within the distance of two miles, measured according to the nearest road, from the residence of the child

a recognised efficient school which the child can attend, attendance at a school temporarily approved in writing by an inspector under this Act, although not a recognised efficient school, shall for the purposes of this Act be deemed attendance at a recognised efficient school until such recognised efficient school as aforesaid is established, and with a view to such establishment the inspector shall immediately report to the Education Department every case of the approval of a school by him under this section.

A child who has not in any week attended school for all the attendances required by this section shall not be employed in the following week until he has attended school for the deficient number of attendances.

The Education Department shall from time to time, by the publication of lists or by notices or otherwise as they think expedient, provide for giving to all persons interested information of the schools in each school district which are recognised efficient schools.

Obtaining of School Attendance Certificate by Occupier of Factory or Workshop.

24. The occupier of a factory or workshop in which a child is employed shall on Monday in every week (after the first week in which such child began to work therein), or on some other day appointed for that purpose by an inspector, obtain from the teacher of the recognised efficient school attended by the child, a certificate (according to the prescribed form and directions) respecting the attendance of such child at school in accordance with this Act.

The employment of a child without obtaining such certificate as is required by this section shall be deemed to be employment of a child contrary to the provisions of this Act.

The occupier shall keep every such certificate for two months after the date thereof, if the child so long continues to be employed in his factory or his workshop, and shall produce the same to an inspector when required during that period.

Payment by Occupier on Application of Sum for Schooling of Child, and Deduction of it from Wages.

25. The board authority or persons who manage a recognised efficient school attended by a child employed in a factory or workshop, or some person authorised by such board authority or person, may apply in writing to the occupier of the factory or workshop to pay a weekly sum specified in the application, not exceeding threepence and not exceeding one-twelfth part of the wages of the child, and after that application the occupier, so long as he employs the child, shall be liable to pay to the applicants, while the child attends their school, the said weekly sum, and the sum may be recovered as a debt, and the occupier may deduct the sum so paid by him from the wages payable for the services of the child.

Employment as Young Person of Child of Thirteen, on obtaining an Educational Certificate.

26. When a child of the age of thirteen years has obtained from a person authorised by the Education Department a certificate of having attained such standard of proficiency in reading, writing, and arithmetic, or such standard of previous due attendance at a certified efficient school, as herein-after mentioned, that child shall be deemed to be a young person for the purposes of this Act.

The standards of proficiency and due attendance for the purposes of this section shall be such as may be from time to time fixed for the purposes of this Act by a Secretary of State, with the consent of the Education Department, and the standards so fixed shall be published in the London Gazette, and shall not have effect until the expiration of at least six months after such publication.

Attendance at a certified day industrial school shall be deemed for the purposes of this section to be attendance at a certified efficient school.

. . . . . .

(1.) INSPECTION.

Powers of Inspection.

68. An inspector under this Act shall for the purpose of the execution of this Act have power to do all or any of the following things; namely,

(1.) To enter, inspect, and examine at all reasonable times by day and night a factory and a workshop and every part thereof when he has reasonable cause to believe that any person is employed therein, and to enter by day any place which he has reasonable cause to believe to be a factory or workshop; and

(2.) To take with him in either case a constable into a factory in which he has reasonable cause to apprehend any serious obstruction in the execution of his duty; and

(3.) To require the production of the registers, certificates, notices, and documents kept in pursuance of this Act, and to inspect, examine, and copy the same; and

(4.) To make such examination and inquiry as may be necessary to ascertain whether the enactments for the time being in force relating to public health and the enactments of this Act are complied with, so far as respects the factory or workshop and the persons employed therein; and

(5.) To enter any school in which he has reasonable cause to believe that children employed in a factory or workshop are for the time being educated; and

(6.) To examine either alone or in the presence of any other person, as he thinks fit, with respect to matters under this Act, every person whom he finds in a factory or workshop, or such a school as aforesaid, or whom he has reasonable cause to believe to be or to have been within the preceding two months employed in a factory or workshop, and to require such person

to be so examined and to sign a declaration of the truth of the matters respecting which he is so examined; and

(7.) To exercise such other powers as may be necessary for carrying this Act into effect.

The occupier of every factory and workshop, his agents and servants, shall furnish the means required by an inspector as necessary for an entry, inspection, examination, inquiry, or the exercise of his powers under this Act in relation to such factory and workshop.

Every person who wilfully delays an inspector in the exercise of any power under this section, or who fails to comply with a requisition of an inspector in pursuance of this section, or to produce any certificate or document which he is required by or in pursuance of this Act to produce, or who conceals or prevents a child, young person, or woman from appearing before or being examined by an inspector, or attempts so to conceal or prevent a child, young person, or woman, shall be deemed to obstruct an inspector in the execution of his duties under this Act: provided always that no one shall be required under this section to answer any question or to give any evidence tending to criminate himself.

Where an inspector is obstructed in the execution of his duties under this Act, the person obstructing him shall be liable to a fine not exceeding five pounds; and where an inspector is so obstructed in a factory or workshop, the occupier of that factory or workshop shall be liable to a fine not exceeding five, or where the offence is committed at night, twenty pounds; and where an inspector is so obstructed in a factory or workshop within the meaning of section sixteen of this Act, the occupier shall be liable to a fine not exceeding one, or where the offence is committed at night, five pounds.

Restriction on Entry of Inspector into Dwellings.

69. An inspector before entering, in pursuance of the powers conferred by this Act, without the consent of the occupier, any room or place actually used as a dwelling as well as for a factory or workshop, shall, on an affidavit or statutory declaration of facts and reasons, obtain written authority so to do from a Secretary of State, or such warrant as is herein-after mentioned from a justice of the peace.

The affidavit or statutory declaration above mentioned may be inspected or produced in evidence in all respects the same as an information on oath before a justice.

A justice of the peace, if satisfied by information on oath that there is reasonable cause to suppose that any enactment of this Act is contravened in any such room or place as aforesaid, may in his discretion grant a warrant under his hand authorising the inspector named therein at any time within the period named therein, but not exceeding one month from the date thereof, to enter, in pursuance of this Act, the room or place named in the warrant, and exercise therein the powers of inspection and examination conferred by this Act, and the fines and provisions of this Act with respect to obstruction of an inspector shall apply accordingly.

. . . . . .

(3.) Miscellaneous.

Registers to be kept in a Factory or Workshop.

77. The occupier of every factory and workshop to which this section applies shall keep in the prescribed form and with the prescribed particulars registers of the children and young persons employed in that factory or workshop, and of their employment, and of other matters under this Act.

The occupier of a factory or workshop shall send to an inspector such extracts from any register kept in pursuance of this Act as the inspector from time to time requires for the execution of his duties under this Act.

This section applies to every factory and workshop in which a child or young person under the age of sixteen years is, for the time being, prohibited under this Act from being employed without a certificate of fitness for employment.

Where by reason of the number of children and young persons employed in a factory or workshop to which this section does not for the time being apply, or otherwise, it seems expedient to a Secretary of State so to do, he may order the occupier of that factory or workshop to keep a register under this section, with power to rescind such order, and while such order is in force this section shall apply to that factory or workshop.

In the event of a contravention of this section in a factory or workshop, the occupier of the factory or workshop shall be liable to a fine not exceeding forty shillings.

Affixing in Factory or Workshop of Abstract of Act and Notices.

78. There shall be affixed at the entrance of a factory and a workshop, and in such other parts thereof as an inspector for the time being directs, and be constantly kept so affixed in the prescribed form and in such position as to be easily read by the persons employed in the factory or workshop—

(1.) The prescribed abstract of this Act; and

(2.) A notice of the name and address of the prescribed inspector; and

(3.) A notice of the name and address of the certifying surgeon for the district; and

(4.) A notice of the clock (if any) by which the period of employment and times for meals in the factory or workshop are regulated; and

(5.) Every notice and document required by this Act to be affixed in the factory or workshop.

In the event of a contravention of this section in a factory or workshop, the occupier of the factory or workshop shall be liable to a fine not exceeding forty shillings.

. . . . . .

(4.) Fines.

Fine for employing Children, Young Persons, and Women contrary to the Act.

83. Where a child, young person, or woman is employed in a factory or workshop contrary to the provisions of this Act, the occupier of the factory or workshop shall be liable to a fine not exceeding three, or if the offence was committed during the night, five pounds for each child, young person, or woman so employed; and where a child, young person, or woman is so employed in a factory or workshop within the meaning of section sixteen of this Act, the occupier shall be liable to a fine not exceeding one, or if the offence was committed during the night, two pounds for each child, young person, or woman so employed.

A child, young person, or woman who is not allowed times for meals and absence from work as required by this Act, or during any part of the times allowed for meals and absence from work is, in contravention of the provisions of this Act, employed in the factory or workshop or allowed to remain in any room, shall be deemed to be employed contrary to the provisions of this Act.

Fine on Parent for allowing Child or Young Person to be employed contrary to the Act, or Neglecting to cause Child to attend School.

84. The parent of a child or young person shall—

(1.) If such child or young person is employed in a factory or workshop contrary to the provisions of this Act, be liable to a fine not exceeding twenty shillings for each offence, unless it appears to the court that such offence was committed without the consent, connivance, or wilful default of such parent; and

(2.) If he neglects to cause such child to attend school in accordance with this Act, be liable to a fine not exceeding twenty shillings for each offence.

. . . . . .

(1.) Definitions.

Factories and Workshops to which Act applies.

93. The expression "textile factory" in this Act means—

any premises wherein or within the close or curtilage of which steam, water, or other mechanical power is used to move or work any machinery employed in preparing, manufacturing, or finishing, or in any process incident to the manufacture of, cotton, wool, hair, silk, flax, hemp, jute, tow, china-glass, cocoa-nut fibre, or other like material, either separately or mixed together, or mixed with any other material, or any fabric made thereof:

Provided that print works, bleaching and dyeing works, lace warehouses, paper mills, flax scutch mills, rope works, and hat works shall not be deemed to be textile factories.

The expression "non-textile factory" in this Act means—

(1.) any works, warehouses, furnaces, mills, foundries, or places named in Part One of the Fourth Schedule to this Act,

(2.) also any premises or places named in Part Two of the said schedule wherein, or within the close or curtilage or precincts of which, steam, water, or other mechanical power is used in aid of the manufacturing process carried on there,

(3.) also any premises wherein, or within the close or curtilage or precincts of which, any manual labour is exercised by way of trade or for purposes of gain in or incidental to the following purposes, or any of them; that is to say,

(*a.*) in or incidental to the making of any article or of part of any article, or

(*b.*) in or incidental to the altering, repairing, ornamenting, or finishing of any article, or

(*c.*) in or incidental to the adapting for sale of any article,

and wherein, or within the close or curtilage or precincts of which, steam, water, or other mechanical power is used in aid of the manufacturing process carried on there.

The expression "factory" in this Act means textile factory and non-textile factory, or either of such descriptions of factories.

The expression "workshop" in this Act means—

(1.) any premises or places named in Part Two of the Fourth Schedule to this Act, which are not a factory within the meaning of this Act.

(2.) also any premises, room, or place not being a factory within the meaning of this Act, in which premises, room, or place, or within the close or curtilage or precincts of which premises, any manual labour is exercised by way of trade or for purposes of gain in or incidental to the following purposes or any of them; that is to say,

(*a.*) in or incidental to the making of any article, or of part of any article, or

(*b.*) in or incidental to the altering, repairing, ornamenting, or finishing of any article, or

(*c.*) in or incidental to the adapting for sale of any article,

and to which or over which premises, room, or place the employer of the persons working therein has the right of access or control.

A part of a factory or workshop may for the purposes of this Act be taken to be a separate factory or workshop; and a place solely used as a dwelling shall not be deemed to form part of the factory or workshop for the purposes of this Act.

Where a place situate within the close, curtilage, or precincts forming a factory or workshop is solely used for some purpose other than the manufacturing process or handicraft carried on in the factory or workshop, such place shall not be deemed to form part of that factory or workshop for the purposes of this Act, but shall, if otherwise it would be a factory or workshop, be deemed to be a separate factory or workshop, and be regulated accordingly.

Any premises or place shall not be excluded from the definition of a

factory or workshop by reason only that such premises or place are or is in the open air.

This Act shall not apply to such workshops, other than bakehouses, as are conducted on the system of not employing any child, young person, or woman therein, but save as aforesaid applies to all factories and workshops, as before defined, inclusive of factories and workshops belonging to the Crown; provided that in case of any public emergency a Secretary of State may exempt a factory or workshop belonging to the Crown from this Act to the extent and during the period named by him.

The exercise by any child or young person in any recognised efficient school during a portion of the school hours of any manual labour for the purpose of instructing such child or young person in any art or handicraft, shall not be deemed to be an exercise of manual labour for the purpose of gain within the meaning of this Act.

Definition of Employment and Working for Hire.

94. A child, young person, or woman who works in a factory or workshop, whether for wages or not, either in a manufacturing process or handicraft, or in cleaning any part of the factory or workshop used for any manufacturing process or handicraft, or in cleaning or oiling any part of the machinery, or in any other kind of work whatsoever incidental to or connected with the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein, shall, save as is otherwise provided by this Act, be deemed to be employed therein within the meaning of this Act.

For the purposes of this Act an apprentice shall be deemed to work for hire.

General Definitions.—"Child;" "Young Person;" "Woman;" "Parent."

96. In this Act, unless the context otherwise requires,—

The expression "child" means a person under the age of fourteen years:

The expression "young person" means a person of the age of fourteen years and under the age of eighteen years:

The expression "woman" means a woman of eighteen years of age and upwards:

The expression "parent" means a parent or guardian of, or person having the legal custody of, or the control over, or having direct benefit from the wages, of a child or young person.

(3.) Application of Act to Scotland and Ireland.

Temporary Saving for Employment of Children under Ten and Children over Thirteen in Scotland and Ireland.

103. The provisions of this Act shall, in the case of a factory or workshop in Scotland or Ireland in which a child under the age of ten

years may lawfully be employed at the passing of this Act, be modified as follows; that is to say,

(1.) Shall apply during twelve months after the commencement of this Act to children of the age of nine years and upwards, as if they were of the age of ten years; and

(2.) Shall not prevent a child who, before the commencement of this Act, is lawfully employed in any factory or workshop as a child under the age of nine years, or any child who during the twelve months next after the commencement of this Act is lawfully employed in any factory or workshop as a child under the age of ten years, from continuing to be employed in a factory or workshop in like manner as if the child were above the age of ten years; and

(3.) Shall apply during twelve months after the commencement of this Act to children of the age of thirteen years and upwards as if they were young persons; and

(4.) Shall not prevent a child, who before the expiration of twelve months after the commencement of this Act is lawfully employed in a factory or workshop as a young person, from continuing to be employed in a factory or workshop as a young person.

Certificates of Birth for purposes of Act.

104. Where the age of any child is required to be ascertained or proved for the purposes of this Act, or for any purpose connected with the elementary education or employment in labour of such child, any person, on presenting a written requisition in such form and containing such particulars as may be from time to time prescribed by a Secretary of State, and on payment of such fee, not exceeding one shilling, as a Secretary of State from time to time fixes, shall be entitled to obtain—

(1.) In Scotland an extract under the hand of the registrar under the Act of the seventeenth and eighteenth years of Her present Majesty, chapter eighty, and any Acts amending the same, of the entry in the register kept under those Acts; and

(2.) In Ireland a certified copy under the hand of the registrar or superintendent registrar under the Registration of Births and Deaths (Ireland) Act[1] of the entry in the register under that Act of the birth of the child named in the requisition.

Application of Act to Scotland.

105. In the application of this Act to Scotland—

(1.) The expression "certified efficient school" means any public or other elementary school under Government inspection:

(2.) In lieu of Christmas Day and either Good Friday or the next public holiday under the Holidays Extension Act, 1875,[2] there shall be allowed as a holiday to every child, young person, and woman employed in a factory or workshop the whole of two days separated from each other by an interval of not less than three months, one of which shall be a day set apart by the

[1] 26 & 27 Vict. c. 11. [2] 38 & 39 Vict. c. 13.

Church of Scotland for the observance of the sacramental fast in the parish in which the factory or workshop is situate, or some other day substituted for such day as aforesaid by the occupier specifying the same in the notice affixed in the factory or workshop :

. . . . . .

(15.) All offences under this Act shall be prosecuted and all penalties under this Act shall be recovered under the provisions of the Summary Jurisdiction Acts at the instance of the procurator-fiscal or of an inspector under this Act :

(16.) The court may make, and may also from time to time alter or vary, summary orders under this Act on petition by such procurator-fiscal or inspector presented in common form :

(17.) All fines under this Act in default of payment, and all orders made under this Act failing compliance, may be enforced by imprisonment for a term to be specified in the order of conviction, but not exceeding three months :

(18.) It shall be no objection to the competency of an inspector to give evidence as a witness in any prosecution for offences under this Act, that such prosecution is brought at the instance of such inspector :

(19.) Every person convicted of an offence under this Act shall be liable in the reasonable costs and charges of such conviction.

VIII.

REPEALED ACTS.

William III. Cap. 26.

Act for Settling of Schools.—[*9th* October 1696.]

Our Sovereign Lord considering, how prejudicial the want of schools in many places have been, and how beneficial the establishing and settling thereof in every parish will be to this Church and kingdom: Therefore his Majesty, with advice and consent of the Estates of Parliament, statutes and ordains, that there be a school settled and established, and a schoolmaster appointed in every parish not already provided, by advice of the heritors and minister of the parish; and for that effect, that the heritors in every parish meet, and provide a commodious house for a school, and settle and modify a sallary to a schoolmaster, which shall not be under one hundred merks, nor above two hundred merks, to be paid yearly at two terms, *Whitsunday* and *Martinmas*, by equal portions, and that they stent and lay on the said sallary conform to every heritors valued rent within the parish, allowing each heritor relief from his tenants of the half of his proportion for settling and maintaining of a school, and payment of the schoolmaster's sallary; which sallary is declared to be by and attour the casualities, which formerly belonged to the readers and clerks of the kirk session. And if the heritors, or major part of them shall not conveen, or being conveened, shall not agree among themselves; then, and in that case, the presbytery shall apply to the commissioners of the supply of the shire, who, or any five of them, shall have power to establish a school, and settle and modify a sallary for a schoolmaster, not being under one hundred merks, nor above two hundred merks yearly, as said is; and to stent and lay on the samen upon the heritors conform to their valued rent, which shall be as valid and effectual as if it had been done by the heritors themselves. And because the proportion imposed upon every heritor will be but small; therefore, for the better and more ready payment thereof, it is statute and ordained, that, if two terms proportions run in the third unpaid, then these that so fail in payment, shall be liable in the double of their proportions then resting, and in the double of every term's proportion that shall be resting thereafter, ay and while the schoolmaster be compleatly paid, and that without any defalcation; and that letters of horning, and all other executorials necessary, be directed at the instance of the schoolmaster, for payment of the said stipend, and double of the proportions in manner foresaid; and discharges all suspensions to pass against schoolmasters of the sallaries, except upon consignation, or a valid discharge: And if any suspension be past, that the Lords discuss the samen summarily, without abiding the course of the Roll. And it is hereby declared, that liferenters, during their lifetime, shall be liable in payment of the proportions imposed on the lands liferented, and execution, in manner foresaid, shall pass against them for that effect, and the heritors shall be always free of the same, during the liferenters lifetime; and if any person find themselves wronged by the inequality of the proportions imposed, it shall be lawful for them to seek redress thereof before the Commissioners of Supply, Sheriff of the shire, or other judge competent, within the space of year and

day after the imposing of the stent, and no otherwise. As also, it is declared, that the providing of the said schools and schoolmasters, is a pious use within the parish, to which it shall be lawful and leisume to patrons, to employ the vacant stipends as they shall see cause, excepting from this Act the bounds of the Synod of *Argyle;* in respect, that, by a former Act of Parliament in the year one thousand six hundred and ninety, the vacant stipends within the said bounds are destined for the setting up and maintaining of schools in manner therein-mentioned; and the said vacant stipends are hereby expressly appointed to be thereto applied, at the sight of the Sheriff of the bounds foresaid. And lastly, his Majesty, with advice and consent foresaid, ratifies and approves all former laws, customs and constitutions, made for establishing and maintaining of schools within the kingdom, in so far as the same are not altered nor innovate by this present Act.

43 GEORGE III. Cap. 54.

An Act for making better Provision for the Parochial Schoolmasters, and for making further Regulations for the better Government of the Parish Schools in Scotland.—[11*th* June 1803.]

Whereas the parish schoolmasters in *Scotland* are a most useful body of men, and their labours have been of essential importance to the publick welfare: And whereas by an Act passed in the Parliament of *Scotland*, in the reign of King *William* the Third, in the year one thousand six hundred and ninety-six [*Scotch* Act], intituled, *Act for settling of Schools*, it is, *inter alia*, statuted and ordained, that there be a school settled and established, and a schoolmaster appointed, in every parish not already provided, by advice of the heritors and minister of the parish; and for that effect, that the heritors in every parish meet and provide a commodious house for a school, and settle and modify a salary to a schoolmaster, which shall not be under one hundred merks nor above two hundred merks *Scots*, to be paid yearly, at two terms, *Whitsunday* and *Martinmas*, by equal portions; and certain rules and regulations were laid down by the said Act, relative to the apportioning and payment of the said salary by the heritors of the parish: And whereas the highest salary by the said Act granted, amounting only to eleven pounds two shillings and two-pence two-thirds of a penny sterling, which by difference in the value of money, and change in the circumstances of the country, has become a provision altogether inadequate for a body of men whose labours are of so great publick utility:

Salary to Schoolmasters.

May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that, from and after the term of *Martinmas* next, the salary of each parochial schoolmaster in every parish of *Scotland* shall not be under the sum of three hundred merks *Scots per annum*, nor above the sum of four hundred merks *Scots per annum*, except in the cases herein-after mentioned.

Heritors and Minister of the Parish to fix such Salaries.

2. And be it further enacted, That within three months after the passing of this Act, the heritors possessed of the qualification required by this Act, and the minister of every parish, shall hold a meeting, of which intimation

shall be given from the pulpit immediately after divine service in the forenoon, and by circular letters, to be written by the minister of the parish, to such heritors having the qualification prescribed by this Act, who are non-resident, and also by leaving a written notice at the mansion house of every heritor, whether resident or not, at least thirty free days, before such meeting shall take place; and on due consideration of the circumstances of the particular parish in respect of extent, population, and valued rent, and the probable amount of the other emoluments of the schoolmaster's office, such meeting shall judge and determine whether the schoolmaster's salary shall be three hundred merks *Scots per annum*, or four hundred merks *Scots per annum*, or such sum between these two sums as to such meeting shall seem most suitable to the circumstances of the parish, and shall fix and determine the amount of the schoolmaster's salary, to be paid to the schoolmaster, by a resolution to be made at such meeting, a copy of which resolution, signed by the preses of the meeting, shall be delivered to the schoolmaster of the parish as his authority for collecting and receiving the salary thereby fixed and determined, which shall be paid by the several heritors at the same terms apportioned among them, in the same manner, and with the same relief against their tenants, as is provided by the aforesaid Act of the Parliament of *Scotland*, passed in the year one thousand six hundred and ninety-six:

Salaries payable in Grain or Meal to continue to be so paid; and to be estimated at the rate of 200 *merks per Chalder.*

Provided always, that no salary at present payable to any schoolmaster shall be diminished; and in all cases where any such salary or any part thereof is payable in grain or meal, such salary in grain or meal shall continue to be paid and payable in the same manner as heretofore, with such additions thereto in money, as to such meeting shall seem proper; and in fixing and determining the amount of the salary to be paid pursuant to this Act, such grain or meal making part of such salary shall be estimated at the rate of two hundred merks *per* chalder.

Salaries so fixed to be payable for 25 *Years.*

3. And be it enacted, That the salaries so fixed and determined in manner above directed, shall continue to be the salaries payable to the schoolmaster of every parish for and during the period of twenty-five years from and after the passing of this Act.

Mode of fixing the average Price of a Chalder of Oatmeal.

And within three years after the expiration of twenty-five years from the passing of this Act, the sheriff or stewart of every county or stewartry shall fix and determine according to the average amount of the fiars of the county or stewartry for the twenty-five years preceding, what is the value or average price of a chalder of oatmeal, and he shall make a return of such average to the office of King's Remembrancer in Exchequer in *Scotland*, and the Lord Chief Baron and Barons of Exchequer are hereby empowered and required, from such returns by the sheriffs and stewarts of *Scotland*, to strike the average price of a chalder of oatmeal for all *Scotland*; and an order of the said Court of Exchequer fixing such average shall, within three months from the date of the last return by the sheriffs and stewarts, be published by the King's Remembrancer in the *Edinburgh Gazette*, and such other *Scots* newspapers as he shall deem sufficient, for three successive

weeks, and a copy thereof shall also be transmitted by the said Remembrancer to the sheriff or stewart clerk of every shire or stewartry in *Scotland;*

Average Price so ascertained shall be the Rate by which the Schoolmasters' Salaries shall be fixed.

Which average so ascertained shall be the rate according to which the schoolmasters' salary shall be fixed in the manner herein-after directed, and the sheriff or stewart clerk shall transmit a certificate thereof, signed by him, to the minister of each parish within the county or stewartry, to be by him submitted to the meeting directed to be called in manner immediately after mentioned.

Heritors and Minister to meet within Three Months after the Date of Certificate of such average Price and fix the Amount of Schoolmasters' Salaries.

4. And be it enacted, That within three months after the date of such certificate, the heritor possessed of the qualification required by this Act, and the minister of every parish in *Scotland*, shall hold a meeting, of which intimation shall be given from the pulpit immediately after divine service in the forenoon, and by circular letters to be written by the minister of the parish to such heritors having the qualification prescribed by this Act, who are non-resident, and also by leaving a written notice at the mansion house of every heritor whether resident or not, at least thirty free days before such meeting shall take place; and on due consideration of the circumstances of the particular parish in respect of extent, population, and valued rent, such meeting shall judge and determine whether the schoolmasters' salary of the same shall be equal to the average price of one chalder and a half, or of two chalders of oatmeal according to the amount thereof, ascertained by the aforesaid certificate, or to such proportion between them as to such meeting shall seem most suitable to the circumstances of the parish, and shall fix and determine the amount of the schoolmaster's salary, to be paid pursuant to such average, and their resolution thereupon; a copy of which resolution, signed by the preses of the meeting, shall be delivered to the schoolmaster of the parish, as his authority for collecting and receiving the salary thereby fixed and determined, which shall be paid to him by the several heritors at the same terms apportioned among them, in the same manner, and with the same relief against their tenants, as is provided by the aforesaid Act of Parliament of *Scotland*, in the year one thousand six hundred and ninety-six.

In case of Neglect, or Dissatisfaction with the Determination, Appeal may be made to the next Quarter Sessions.

5. Provided always, and be it enacted, That in case the heritors and minister shall neglect or refuse to determine the amount of the salary to be paid to the schoolmaster according to the provisions of the Act, or in case any heritor, or the schoolmaster shall be dissatisfied with the determination made, it shall be competent within three months after such meeting ought to have been held, or such determination shall have been made, for the schoolmaster to apply, or for such person so dissatisfied to appeal, to the next quarter sessions held for the shire or stewartry within the bounds of which the parish or parish kirk lies, whose judgment shall be final, and no appeal by advocation, suspension, or otherwise, shall be admitted against the judgment given at such quarter sessions: Provided always, that no heritor of the parish from whence such appeal comes shall vote upon such appeal at such quarter sessions.

At the end of every 25 *Years, the average Price of the Chalder of Oatmeal, and the Schoolmaster's Salary shall be ascertained and fixed in Manner before directed.*

6. Provided always, and be it enacted, That after twenty-five years shall have elapsed from the time the amount of a schoolmaster's salary shall have been so fixed, the sheriff of a shire, stewart of a stewartry shall within three months again determine the average price of a chalder of oatmeal in the manner directed by this Act; and shall, as above directed, return the same to the office of King's Remembrancer in Exchequer, and the Lord Chief Baron and Barons of Exchequer shall again by an order of court fix the average price for all *Scotland;* and the King's Remembrancer shall again transmit a copy of said order of court to the sheriff or stewart clerk of each shire or stewartry, and the said sheriff or stewart clerk shall again publish the same in the *Edinburgh Gazette* and *Scots* newspapers, and transmit a certificate of said average and order of court to the minister of each parish within his shire and stewartry, and the heritors and ministers shall again fix and determine the schoolmaster's salary according to such average, such salary never being less than the value of one chalder and a half, nor more than two chalders for the next twenty-five years, and so *toties quoties* at the end of every twenty-five years for ever, unless altered by Parliament, and every such determination of salary shall be liable to appeal to the quarter sessions, in manner and to the effect above directed.

Where there is but One qualified Heritor, he shall have Two Votes.

7. Provided always, and be it enacted, That in every parish where there is only one heritor qualified as herein-after prescribed, such heritor shall have two votes at every meeting directed to be held pursuant to this Act; and in all meetings where no preses has been chosen, the heritor present possessed of the highest valuation shall have the casting vote.

A School-house and Dwelling-house and Garden to be provided where there are none.

8. And be it further enacted, That in every parish where a commodious house for a school has not already been provided, pursuant to the directions in the above recited Act, and in every parish where a dwelling-house for the residence of the schoolmaster has not already been provided together with a portion of ground for a garden to the extent hereafter mentioned, the heritors of every such parish shall provide a commodious house for a school, and also a house for the residence of the schoolmaster, such house not consisting of more than two apartments including the kitchen, together with a portion of ground for a garden to such dwelling-house, from fields used for the ordinary purposes of agriculture or pasturage, as near and convenient to the schoolmaster's dwelling-house as reasonably may be, which garden shall contain at least one-fourth part of a *Scots* acre, and shall be inclosed with such fence as is generally used for such purposes in the district of the county where it is situated; and the expence of providing such school-house, dwelling-house, and garden, and supporting the same, shall be defrayed and paid in the same and like manner as is prescribed for providing a house for a school by the aforesaid Act of the Parliament of *Scotland:*

If a Garden cannot be allotted, an addition to Salary shall be allowed.

Providing always, that where the heritors shall determine that such garden cannot be allotted to the schoolmaster without great loss and inconvenience, it shall be optional to them, with the authority of the quarter sessions of the county or stewartry, to assign to the schoolmaster in lieu of such garden an addition to his salary, at the rate of eight bolls of oatmeal *per* acre, to be computed according to the average ascertained in manner herein-before directed.

In case of Neglect or Dissatisfaction, Schoolmasters may apply to Quarter Sessions.

9. And be it further enacted, That in case the heritors shall neglect or refuse to provide the accommodations of house, school-house, and garden, or additional salary in lieu thereof, to schoolmasters according to the provisions of this Act, or in case the schoolmaster shall not be satisfied with the Accommodations afforded him, it shall be competent for him to bring the same by representation or petition before the quarter sessions held for the shire or stewartry to which the parish of which he is schoolmaster belongs, or in which the parish kirk is situated; and in all such cases the judgment of the quarter sessions shall be final, without any further appeal by advocation, suspension, or otherwise: Provided always, that no justice of the peace who shall be an heritor in the parish of such schoolmaster shall vote upon such representation or petition.

Relief to Heritors, whose Ground shall be taken for School-house, &c. shall be settled by the Sheriff.

10. Provided always, and be it enacted, That the heritor or heritors from whose estates any ground shall be taken for the purpose of such school-house, dwelling-house, and garden, shall have his, her, or their relief against the other heritors of the parish, for the value of the ground so to be taken in proportion to the valued rent of the lands belonging to the whole heritors in the parish; such relief to be settled only by the sheriff or stewart of the county or stewartry, without appeal by advocation, suspension, or otherwise.

Regulations to be observed when Parishes consist of Two or more Islands, or of great Extent, where One Parochial School would be insufficient.

11. And be it enacted, That in case of those parishes which consist of districts detached from each other by the sea or arms of the sea, or otherwise, as where a parish consists of two or more islands, of which there are several instances in the Highlands, North Isles, and *Hebrides*, or where it is otherwise of great extent or population, so that one parochial school cannot be of any effectual benefit to the whole inhabitants of such parishes, it shall be competent to the heritors and minister if they shall see cause on fixing a salary of six hundred merks, or the value of three chalders of oatmeal, to be computed according to the provisions of this Act, to divide the same among two or more teachers according to the extent and population of the parish; and these proportions so divided shall be paid to teachers of schools in the same way and manner, and under the same conditions, as hereafter are specified by this Act, for supplying vacant parochial schools with masters; but in respect that the heritors of such parishes are to pay an higher salary, they are hereby exempted from the obligation of providing school-houses, dwelling-houses, and gardens, for the teachers among whom the salary is to be divided in the manner aforesaid; and in case a difference of opinion shall arise among the heritors respecting the propriety and usefulness of such division of the salary, the same shall be submitted by petition or representation to the quarter sessions of the shire or stewartry within the bounds of which the parish or parish kirk is situated; and the judgement thus obtained shall be final without appeal by advocation, suspension, or otherwise.

Not to extend to Royal Burghs.

12. Provided always, and be it enacted, That none of the provisions of this Act shall apply to the case of a parish, which consists only of a royal burgh or part of a royal burgh.

Where a Parish consists of a Burgh and a Landward Heritor, Schoolmaster to be appointed and maintained as heretofore, &c.

13. And be it further declared, That where a parish consists of a royal burgh, or part of a royal burgh, and a landward heritor or heritors, the schoolmaster shall be appointed and maintained by the burgh, or by the landward heritor or heritors, or by the burgh and landward heritors, in the same way and manner, and according to the same proportions that have hitherto been observed in such parish; the salary and accommodations being always equal in value to those provided by this Act, and the same remedy being allowed in case they are otherwise, and to be applied for in the manner already specially pointed out; and provided any additions shall be granted, the same shall be paid in the same proportions by the parties from whom the present salary is received.

Schoolmasters to be elected in Cases of Vacancies.

14. And be it enacted, That, from and after the passing of this Act, in case of vacancy in the office of schoolmaster, by death or otherwise, the minister of the parish shall within fifteen days, intimate or cause to be intimated from the pulpit, immediately after divine service in the forenoon, the vacancy which has taken place, and communicate the knowledge of the same by letter to such heritor or heritors as may be non-resident; and the heritors possessed of the qualification required by this Act, with the minister of the parish, are hereby appointed to hold a meeting, of which intimation shall be given by the minister, by edictal citation and circular letters to such as are non-resident, at least thirty free days before it takes place; and such meeting or adjourned meeting shall elect a person to the vacant office of schoolmaster; and in the event of the parish being vacant, the presbytery shall appoint some one of their number to make the intimations and give the notices which, according to the provisions of this Act, the minister is required to do.

On Failure, the Commissioners of Supply to appoint.

15. Provided always, and be it enacted, That if the heritors qualified as is hereby required, and minister, shall fail to elect a schoolmaster within four calendar months from the time the vacancy shall have taken place, then the presbytery within the bounds of which the parish is situated, shall apply to the convener of the Commissioners of Supply of the county or stewartry, who, or any five of them, at a meeting to be called by the convener upon thirty days notice, shall have power, *jure devoluto*, and are hereby directed to elect a person to supply the vacancy.

Schoolmasters to be Examined and Approved by the Presbytery.

16. And be it further enacted, That every schoolmaster elected under the provisions of this Act, shall carry the minutes, or an extract or certified copy of the minutes of his election to the presbytery, accompanied with attestations of his having taken the oath to his Majesty before any one of his Majesty's Justices of the Peace; and the presbytery shall thereupon take trial of his sufficiency for the office, in respect of morality and religion, and of such branches of literature as by the majority of heritors and minister shall be deemed most necessary and important for the parish, by examination of the presentee, by certificates and recommendations in his favour, by their own personal inquiry or otherwise, and shall see him sign the Confession of Faith and Formula of the Church of *Scotland;* and their judgment or determination as to the qualifications of such presentee for the

office of schoolmaster shall not be reviewed or suspended by any court, civil or ecclesiastical; and provided they are satisfied with the same, he shall be furnished with an extract from their minutes, bearing that he had appeared, produced the attestations required, and had been found on trial duly qualified for discharging the duties of the office to which he had been elected, which extract shall complete his right to the emoluments provided by this Act.

If found unqualified, Time allowed to the Heritors and Minister.

17. Provided always, and be it enacted, That in case the person elected is not found duly qualified, the heritors and minister shall only be allowed what remained of the four months, at the time of his election, with so many days more as required by this Act.

Heritors and Minister to fix the School Fees.

18. And be it further enacted, That the heritors qualified as is hereby required, and minister, in a meeting called on thirty days notification from the pulpit, and by letter from the minister to the non-resident heritors, and by notice to be left at the mansion house of each heritor, whether resident or not, shall have the power of fixing the school fees from time to time as they shall judge expedient; and a table of such fees, signed by the preses of the meeting, shall be hung up in the schoolroom: Provided always, that the schoolmaster shall be obliged to teach such poor children of the parish as shall be recommended by the heritors and minister at any parochial meeting.

Superintendence of Schools continued to Ministers.

19. And be it enacted, That the superintendence of schools shall continue with the ministers of the Established Church as heretofore, according to the several Acts of Parliament respecting the same, except in so far as altered by this present Act.

Presbyteries to regulate Hours of Teaching.

20. And be it enacted, That as often as presbyteries in the course of their visitation, shall find any thing wrong with respect to the hours of teaching, or the length of the vacation annually given, or when any complaint shall be made to them upon those subjects by parties concerned, they shall have the power of regulating the same in the manner they may judge most consistent with the particular circumstances and general good of the parish; and the schoolmaster is hereby required to conform to and obey all regulations so made by the presbytery, under pain of censure or suspension from or deprivation of his office, as to the presbytery shall seem proper.

And to take Cognisance of Schoolmasters Conduct.

21. And be it enacted, That when any complaint from the heritors, minister, or elders, against the schoolmaster, charging him with neglect of duty, either from engaging in other occupations or from any other cause, or with immoral conduct, or cruel and improper treatment of the scholars under his charge, shall be presented to the presbytery, they shall forthwith take cognisance of the same, serve him with a libel if the articles alledged appear to them to be of a nature which requires it, and having taken the necessary proof, they shall acquit or pass sentence of censure, suspension, or deprivation, as shall appear to them proper upon the result of such investigation; which judgment shall be final, without appeal to or review by any court, civil or ecclesiastical; and in case they shall depose the in-

cumbent from the office of schoolmaster, his right to the emoluments and accommodations of the same shall cease from the time of his deposition; and in case he shall fail or refuse to remove from the school, school house, and garden, within the space of three months from the date of such sentence or deposition, the sheriff of the shire, or stewart of the stewartry, upon having an extract or certified copy of the sentence of deposition by the presbytery laid before him, shall forthwith grant letters of ejection against such schoolmaster, of which no bill of suspension or advocation, nor action of reduction shall be competent: and in case of such deposition the school shall immediately be declared vacant, and the election of another schoolmaster shall take place.

Qualification of Heritors.

22. Provided always, and be it enacted, That it shall not be lawful for any heritor who is not a proprietor of lands within the parish, to the extent of at least one hundred pounds *Scots* of valued rent appearing in the land tax books of the county within which such parish is situated, to attend or vote at any meeting held pursuant to this Act; but every heritor qualified as above may vote by proxy, or by letter under his hand.

Former Acts confirmed.

23. Provided also, and be it enacted, That all former Acts and Statutes with regard to parish schools or schoolmasters are hereby ratified and confirmed, in so far as they are not altered by the express provisions of this Act.

1 & 2 VICT. cap. 87.[1]

An Act to facilitate the Foundation and Endowment of additional Schools in Scotland.—[10*th* August 1838.]

Whereas an Act was passed by the Parliament of *Scotland* in the first Parliament of King *William*, in the year One thousand six hundred and ninety-six [1696, c. 26.], intituled *Act for settling of Schools:* And whereas another Act was passed by the Parliament of *Great Britain*, in the forty-third year of the reign of His Majesty King *George* the Third [43 G. 3. c. 54.], intituled *An Act for making better Provision for the Parochial Schoolmasters, and for further Regulations for the better Government of the Parish Schools, in* Scotland: And whereas another Act was passed in the fifth year of the reign of His Majesty King *George* the Fourth [5 G. 4. c. 90.], intituled *An Act to amend an Act for building additional Places of Worship in the Highlands and Islands of* Scotland: And whereas under the said last-recited Act a number of places of worship have been built in the Highlands and Islands aforesaid, and the parishes in which such additional places of worship have been built have been divided and disunited *quoad sacra:* And whereas the parish schools and other means of education existing in the Highlands and Islands aforesaid are wholly inadequate to the education of the people, and some places are altogether destitute of such schools or other means of instruction, and it is desirable that provision should be made against so great an evil:

Commissioners of the Treasury authorised to provide, out of Sums granted for Education in Scotland, for the Endowment of additional Schools.

Be it therefore enacted by the Queen's most excellent Majesty, by and

[1] This Act was repealed only "in so far as inconsistent with the provisions of the Education (Scotland) Act, 1872." It is wholly repealed by the Highland Schools Act, 1873, which will be found in the Appendix, p. 130. Cf. p. xlviii, note 3.

with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall and may be lawful for the Commissioners of Her Majesty's Treasury of *Great Britain* and *Ireland* for the time being, or any three of them, from time to time to set apart and appropriate, from any sum which has been or may be voted by Parliament for purposes of education in *Scotland*, any such part thereof as they shall deem expedient and necessary, for the endowment of additional schools in such parts of such divided parishes aforesaid as they shall judge proper.

Money how to be invested.

2. And be it enacted, That it shall be lawful for the said Commissioners of Her Majesty's Treasury from time to time to invest the sum or sums to be set apart and appropriated as aforesaid in the purchase of three *per centum* consolidated bank annuities, or such other Government stock or funds as they shall think fit, and in the name or names of such person or persons as they shall nominate and appoint, and to direct the dividends or proceeds of the monies so invested to be paid to such person or persons in *Scotland* as they shall nominate, to be applied in manner herein-after provided.

If Heritors of divided Parishes provide Schools, &c., such Schools may be endowed.

3. And be it enacted, That in all parishes which shall have been divided *quoad sacra* under the said last-recited Act, if in that district or division of any such parish in which there shall be no school or not an adequate number of schools, or in which there being a school or schools but no endowment or no sufficient or permanent endowment for the schoolmaster or schoolmasters of the same, the heritors of such parish or district shall, at their own expense or otherwise, provide an adequate schoolhouse and schoolmaster's dwelling-house, consisting of not less than two rooms, besides the kitchen and a garden, which shall be reported by the presbytery of the parish to the said Commissioners of Her Majesty's Treasury to be in all respects equal and answerable to the description of schoolhouse, schoolmaster's house (excepting that the schoolmaster's house under this Act shall consist of not less than two apartments besides the kitchen), and garden, contained in and required by the said recited Act of the forty-third year of the reign of His Majesty King *George* the Third, and which shall be conveyed to, vested in, and held by any person or persons to be appointed by the said Commissioners of Her Majesty's Treasury or any three of them for the purposes of this Act, then and in such case it shall be lawful for the said Commissioners of Her Majesty's Treasury to appropriate or to direct to be appropriated, out of the dividends or proceeds of the money to be invested as aforesaid, a sum not exceeding the maximum sum payable to parochial schoolmasters, as directed to be ascertained and fixed according to the average amount of the fiars price of oatmeal under and in the manner by the said recited Act of the forty-third year of the reign of King *George* the Third directed to be paid to the schoolmaster to be appointed to such school in manner after mentioned, by such person or persons as the said Commissioners or any three of them shall appoint, by equal portions half-yearly at the terms of *Whitsunday* and *Martinmas* in each year.

Incapacitated Persons empowered to convey Heritages for Purposes of this Act.

4. Provided always, and be it enacted, that it shall be lawful for heirs of entail, tutors, curators, trustees, and others under any legal disability or

incapacity, with or without valuable consideration, to give and dispone heritably and irredeemably lands or heritages for the purposes aforesaid; and such heirs of entail or incapacitated persons shall not be thereby subject to or incur any forfeiture or irritancy or liability for damages under any deed of entail or trust deed or other deed under which he, she, or they may hold such lands or heritages.

Conveyance to be free of Stamp Duty.

5. And be it enacted, That the conveyance of such lands or heritages for the purposes of this Act shall be free of all stamp duty, any law to the contrary notwithstanding, and shall be made according to the following form or in words to the like effect:

Form of Conveyance.

"I [*or* we] [*insert name and description of the disponer*], do hereby "grant, dispone, and convey to [*insert the names of the persons to be ap-*"*pointed by the Commissioners of Her Majesty's Treasury*], all [*describe the* "*premises*], and all my [*or* our] right, title, and interest [*or* right, title, and "interest of those for whom we act,] to and in the same and every part "thereof, to be held for the purposes specified in and according to the true "intent and meaning of an Act passed in the first year of the reign of Her "Majesty Queen *Victoria*, intituled [*insert the title of this Act*]. In witness "whereof I [*or* we] have subscribed these presents, written by [*name and* "*designation of the writer*], this [*day*] day of [*month*] in the year [*year*] "before these witnesses [*name and designation of two witnesses, who will* "*also subscribe as such.*]"

And such conveyances shall be recorded within sixty days of the date thereof in the General or Particular Register of Sasines, and shall be valid and effectual in law to all intents and purposes, and shall be a complete bar to all other rights, titles, trusts, interests, and incumbrances to, in, or upon the subjects so conveyed.

Schools, &c., to be maintained by Heritors.

6. And be it enacted, That the schoolhouse and schoolmaster's house so to be provided shall in all time thereafter be maintained and kept in repair, or if necessary be rebuilt, by the heritors of the whole parish, in the like manner as they are now liable to maintain parochial schools and schoolmasters houses under the said recited Act of the forty-third year of the reign of His Majesty King *George* the Third, and failing their so doing it shall be competent and lawful for the schoolmaster or for any heritor to bring the case by representation or petition before the Quarter Sessions of the peace of the county in which such parish is situated, who shall direct and ordain such repairs to be made as shall be necessary, and the judgment of the Quarter Sessions shall be final, and not subject to review; provided that no Justice of the Peace who shall be an heritor in such parish shall vote upon such representation or petition.

Schoolmasters to be appointed.

7. And be it enacted, That the heritor or heritors and the minister of any parish within which any such school, schoolmaster's house, and garden shall have been reported to have been provided as aforesaid shall, within four months thereafter, and failing them the Commissioners of Supply of the

county, *jure devoluto*, shall appoint a schoolmaster to such school; and in like manner, upon any future vacancy in any such parish, the heritors and minister or the Commissioners of Supply shall, within four months of such vacancy, appoint a schoolmaster to supply the same in such manner and subject to the like examination and approval by the Presbytery as is directed by the said last-mentioned Act in relation to parochial schoolmasters.

Schoolmasters to be entitled to School Fees, and have the like Powers as Parish Schoolmasters under 43 *G.* 3.

8. And be it enacted, That all schoolmasters appointed under the authority of this Act shall be entitled to school fees, and be bound to teach *gratis* such poor children as the heritors and minister shall recommend in terms of the said recited Act of the forty-third year of the reign of His Majesty King *George* the Third, and shall be under and subject to the like jurisdiction, regulations, conditions, and provisions, and have and enjoy the like powers, privileges, immunities, and exemptions, as parochial schoolmasters under the said last-mentioned Act.

No Alteration of District under 5 *G.* 4. *to affect endowments under this Act.*

9. And be it enacted, That no alteration of any divided parish or district to be made by virtue of the said recited Act of the fifth year of the reign of His Majesty King *George* the Fourth shall in any way affect any school to be provided as aforesaid, or schoolhouse or garden, or the appointment or endowment of any schoolmaster to be appointed under this Act.

Schoolmasters under this Act subject to Provisions under Act of 47 *G.* 3. *c.* 85.

10. And be it enacted, That every schoolmaster to be appointed in virtue of this Act shall be in all respects under and subject to the provisions of an Act passed in the forty-seventh year of the reign of His Majesty King *George* the Third, intituled *An Act for raising and securing a Fund for the Relief of Widows and Children of Burgh and Parochial Schoolmasters in* Scotland, as if such schoolmasters had been specially described and comprehended therein.

Schools and Schoolmasters to be subject to any future Alterations.

11. Provided always, and be it declared and enacted, That all schools established and appointments of schoolmasters made under this Act shall be held subject to such alterations as may hereafter be made by law in such schools or in the office of such schoolmasters.

Two first-recited Acts applied to this Act.

12. And be it enacted, That the said two first-recited Acts shall, in as far as the same are applicable to and consistent with this Act, be deemed and taken to be part of this Act, and be construed and carried into force and effect along therewith, in all respects as if the same were re-enacted and repeated therein.

Proceedings to be reported to Parliament.

13. And be it enacted, That the said Commissioners of Her Majesty's Treasury shall once in every year report their proceedings in writing to

both Houses of Parliament, showing the sums of money invested and appropriated and the schools endowed under the provisions of this Act.

24 & 25 Vict. Cap. 107.

An Act to alter and amend the Law relating to Parochial and Burgh Schools, and to the Test required to be taken by Schoolmasters in Scotland.—[6*th* August 1861.]

Whereas an Act was passed in the forty-third year of the reign of His Majesty *George* the Third, chapter fifty-four, intituled *An Act for making better Provision for the Parochial Schoolmasters, and for making further Regulations for the better Government of the Parish Schools in* Scotland, [43 G. 3. c. 54]: And whereas it is expedient to amend the said Act, and to make further and other provisions for the maintenance and government of the said schoolmasters and schools, and to abolish the test imposed by law on schoolmasters in *Scotland*:—Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Interpretation of Terms.

1. Where not inconsistent with the context, the following expressions shall have the meaning herein-after assigned them; that is to say,

The expression "parochial school" shall mean and include every school established or to be established or provided for under the said recited Act:

The expression "burgh school" shall mean and include every burgh, grammar, or other public school, not being a parochial school.

Salaries of Schoolmasters to be not less than 35*l. nor more than* 70*l. per Annum, but where Two or more Schools, Salaries not to be less than* 50*l. nor more than* 80*l.*

2. From and after the term of *Martinmas* next after the passing of this Act the salary of every schoolmaster of any parochial school shall not be less than the sum of thirty-five pounds, nor more than the sum of seventy pounds *per annum*: provided always, that where two or more schools have been or shall be established in any parish in terms of the said Act the total amount of the salary payable to the schoolmasters therein shall not be less than fifty pounds nor more than eighty pounds *per annum*, to be apportioned among the said schoolmasters as the heritors shall determine, in the manner provided by the said Act; and the salaries herein provided shall be in lieu of the salaries payable under the provisions of the said Act: provided also, that it shall be lawful for the heritors, if they shall think fit, to make any addition granted by them to the salary of any schoolmaster beyond the minimum amount hereby fixed to be dependent upon the number of scholars receiving instruction in his school, under such regulations as they may deem expedient.

Salary to be fixed by the Heritors and Minister, and to be payable in Money at the Terms and under Conditions now in use.

3. The minister of every parish in which there is a parochial school shall, within three months from and after the passing of this Act, and on every

occasion of a vacancy in the office of schoolmaster within six weeks after such vacancy shall have taken place, call a meeting of the heritors together with the said minister, in the manner prescribed in the said recited Act, for the purpose of fixing the salary of the schoolmaster under this Act, subject always to the appeal provided in the said recited Act; and the salary to be so fixed shall be payable in sterling money, at the same terms and under the same conditions, provisions, and regulations as are at present in use; and in case in regard to any parish such meeting shall not have been held or the salary shall not have been fixed in manner and within the period herein prescribed, the salary shall, until such meeting shall have been held and such salary so fixed, be held as fixed at the amount of fifty pounds *per annum*, which amount shall be payable to the schoolmaster in manner herein-before prescribed; and where two or more schools have been established in any one parish, the said sum of fifty pounds shall be payable to the several schoolmasters thereof, in the same proportion according to which their several salaries were payable before the passing of this Act: provided always, that where any parish shall be vacant at the time of the passing of this Act, or become vacant before any such meeting shall be called, or where any minister shall decline or delay calling such meeting after having been required so to do by any heritor or heritors holding not less than one third of the valuation of the parish, it shall be competent for such heritor or heritors to call, by notice affixed to the door of the parish church, and either a circular sent to each heritor, or an advertisement published in a newspaper of general circulation in the district, a meeting for the purpose of fixing the salary of the schoolmaster under this Act, and the salary fixed at such meeting within the limits specified in this act shall be the salary of the schoolmaster or schoolmasters.

Heritors may discontinue existing Side Schools.

4. At the meeting aforesaid it shall be lawful for the heritors and minister to resolve to discontinue, from and after a date to be fixed by them, any subsisting side school in the parish: provided always, that if such side school is not vacant at the date of such meeting they shall provide to the schoolmaster thereof during his life, from and after its discontinuance, an annual payment equal in amount to the full salary to which at the date of the passing of this Act he had right by law, under the provisions of the said recited Act, together with the annual value of any dwelling house to which he may have been entitled as such schoolmaster, as the same is or shall be valued by the assessor for the county, which amount shall be assessed, levied, and paid over and above the salaries payable under this Act, and in like manner as such salaries are hereby directed to be assessed, levied, and paid.

Heritors may establish a Female Teacher.

5. It shall be lawful for the heritors and minister, at the meeting aforesaid, or at any subsequent meeting duly called for that purpose, to resolve that a female teacher shall be established, to give instruction in such branches of female industrial and household training, as well as of elementary education, as they shall then or from time to time prescribe, and to provide, over and above the salary herein-before mentioned, a yearly sum not exceeding thirty pounds as a salary for such female teacher, which yearly sum shall be assessed, levied, and paid in like maner as such herein-before mentioned salary is hereby directed to be assessed, levied and paid; and it shall be lawful for the said heritors and minister to engage and

appoint such female teacher for such period of time and on such terms and conditions as shall be agreed on.

Side School Teacher may be required to resign, on increasing Salaries, Provision being made for him during Life.

6. It shall be lawful for the heritors and minister, at such meeting as aforesaid, to resolve to require the teacher of any side school in the parish, on a notice of not less than three months, to resign his office, on their providing to him during his life an annual payment equal in amount to the full salary to which at the date of the passing of this Act he had right by law, under the provisions of the said recited Act, together with the annual value of any dwelling house to which he may have been entitled as such schoolmaster, as the same is or shall be valued by the assessor of the county, which amount shall be assessed, levied, and paid over and above the salaries payable under this Act, and in like manner as such salaries are hereby directed to be assessed, levied, and paid; and at the expiry of three months from notice as aforesaid, if such teacher shall not previously have given in his resignation, the heritors and minister having made provision for such annual payment as aforesaid, the right of such teacher to his office shall cease and determine.

Salaries where not fixed at the maximum Amount may be increased.

7. If in any parish the salary shall have been fixed at a yearly sum less than the maximum amount herein-before specified, it shall be lawful to the heritors and minister, at any meeting to be called and held in the manner before prescribed, from time to time to increase the amount of such salary, provided the same shall not exceed the said maximum amount, and on any vacancy in the office of schoolmaster from time to time to reduce the salary, so that it shall not be less than the minimum salary herein-before specified; provided that it shall be the duty of the minister to call such meeting only on the requisition of any heritor or heritors being proprietors of not less than one fourth part of the whole lands and heritages situate within the parish.

Office of Schoolmaster may be declared vacant where retiring Salary has already been agreed upon between Heritors and Schoolmaster.

8. In case the heritors shall, previously to the passing of this Act, have entered into any agreement with the schoolmaster of any parish for his retirement from the performance of the duties of his office, on payment to him of a retiring allowance or otherwise, it shall be lawful to the heritors, at any meeting to be called and held as aforesaid, to declare the office of schoolmaster of such parish vacant, and to proceed to elect another schoolmaster, and to grant such retiring allowance or other terms to such retiring schoolmaster as may have been agreed upon as aforesaid, payable during the remainder of his life, which retiring allowance shall be payable in all respects in like manner with the salary of the schoolmaster.

Examination by Examiners appointed by the Universities to come in the Place of the Examination by the Presbytery.

9. The sixteenth section of the said recited Act shall be and is hereby repealed; and in place of the examination by the Presbytery therein prescribed it is hereby enacted as follows; viz.,

(1.) It shall be the duty of the University Court of each University in *Scotland*, as soon as conveniently may be, and in no case later

than two months after the passing of this Act, and thereafter from time to time, to appoint six persons to be examiners of parochial schoolmasters, three of such persons being Professors in the Faculty of Arts, and three of such persons being Professors in the Faculty of Divinity of the University.

Examiners to hold the Office for Two Years, but may be re-appointed; and Vacancies to be filled up.

(2.) The persons so appointed shall continue to be examiners during two years from and after the date of their respective appointments, and until other persons shall have been in like manner appointed in their room; provided that it shall be lawful to the University Court to re-appoint all or any of the same persons to be such examiners, and to fill up from time to time any vacancy which may occur by the death, resignation, or disqualification of any of the examiners; and it shall be lawful to each of the persons so appointed to nominate as his deputy, with power to act as his substitute in case of his absence at any meeting of the examiners, any person who may have become a graduate in arts of the university not later than three years prior to such nomination; provided that such nomination shall be approved by the University Court, and also provided that the persons nominated by such examiners as are professors in the faculty of divinity shall be ministers or licentiates of the Church of *Scotland:*

Examiners to make and publish Regulations with Approval of University Court.

(3.) It shall be lawful to the examiners to make, on or before the eleventh day of *November* one thousand eight hundred and sixty-one, and thereafter from time to time, such regulations as they shall see fit in regard to the time and manner of examinations, and as to the subjects to which the same shall extend, and to regulate the notice to be given thereof, regard being always had in the framing of these regulations to the circumstances of each particular district; provided that such regulations shall be approved of by the University Court; and the said regulations, when so approved, shall be published by advertisement in such manner as the University Court shall direct; and the examiners may appoint one of their own number, or any one of their substitutes, to act as their secretary; and such examinations shall be held within the buildings of the university, and at such time and place as shall be fixed by the University Court:

Scotland to be divided into Four Districts as in Schedule (A).

(4.) For the purposes of the examination of parochial schoolmasters the parochial schools in *Scotland* shall be and are hereby distributed into four districts, each in connection with one of the universities, as set forth in the Schedule (A.) hereto annexed:

Persons elected Schoolmasters to be examined by the Examiners.

(5.) Every person elected to be a parochial schoolmaster under the provisions of this and the said recited Act, and every person elected

to be a schoolmaster under the provisions of the Act of the First and Second Years of the Reign of Her Majesty, Chapter Eighty-seven, shall, before his admission to the said office, and as a condition thereof, submit himself to the trial and examination of the examiners for the district to which the parish for which he has been elected appertains, as to his fitness and qualifications for the duties of the said office; and being found qualified, the said examiners shall furnish to him a certificate to that effect subscribed by them or by a majority of their number, which certificate shall be conclusive evidence that he has passed the requisite examination, and been found qualified for the said office, and the examiners shall have power, with consent of the Committee of the Privy Council on Education, to require the attendance at any such examination, for the purpose of assisting therein, of one of her Majesty's Inspectors of Schools.

Electors of Schoolmaster may choose more than One Candidate to be tried by Examiners.

10. It shall be lawful for the persons entitled to elect any burgh or parochial schoolmaster, if they shall see fit, instead of electing some one person to the vacant office, to choose and nominate two persons or three persons to be tried by the examiners, whose duty it shall be to make trial of the comparative fitness and qualifications of the persons so chosen and nominated, and to determine which of them is the best qualified and most fit for the school with reference to which they have been so chosen, and to give the person so preferred by them a certificate to that effect, and such certificate, along with the minute of nomination by the persons entitled to elect, and also, in the case of a parochial schoolmaster, the certificate of his having emitted the declaration herein-after set forth, shall complete the right of the person so preferred to the office of schoolmaster: Provided always, that if the examiners shall not be satisfied of the fitness and qualifications of any of the persons nominated as aforesaid, they may decline to grant a certificate to any of them, of which declinature they shall forthwith cause intimation to be made to the persons having the right of election; and provided further, that in the event of two or more candidates for the office of schoolmaster being remitted by the heritors and minister to the examiners for competitive examination, the heritors shall pay to each of the examiners a fee of ten shillings for each additional candidate so examined; and in the event of the magistrates of any burgh remitting any candidate for examination to the examiners, they shall pay to each of the examiners a fee of one pound one shilling if there be only one, and a fee of ten shillings for each additional candidate.

Commissioners of the Treasury to pay 21*s. to each of the Examiners in respect of each Examination, and* 15*s. to their Secretary.*

11. It shall be lawful to the Commissioners of Her Majesty's Treasury to pay out of any monies which may be voted by Parliament for that purpose the sum of one pound one shilling to each of the said examiners for and in respect of every person examined by them under the provisions of this Act, and also the sum of fifteen shillings for each such examination to the secretary of the examiners, out of which sum he shall defray the expense of the advertisements required by this Act and other incidental expenses.

Parochial Schoolmasters not to be required to sign Confession of Faith or Formula, but to make a Declaration and to undertake to conform to the Shorter Catechism.

12. From and after the passing of this Act, it shall not be necessary for any schoolmaster, or for any person elected a schoolmaster, of any parochial school, or of any school under the provisions of the Act of the first and second years of the reign of Her Majesty, chapter eighty-seven, to profess or subscribe the Confession of Faith, or the formula of the Church of *Scotland*, or to profess that he will submit himself to the government and discipline thereof: Provided always, that every person elected a schoolmaster of any such school shall, as a condition of the office, and before admission thereto, produce before the principal, or, in case of his absence or inability to act, before one or other of the professors in the faculty of divinity of the university in which he has been examined, an extract or certified copy of the minutes of his election, together with the said certificate by the examiners, and shall in the presence of the principal or professor emit and subscribe a declaration in the following terms; that is to say,

'I *A.B.* do solemnly and sincerely, in the presence of God, profess, tes-
'tify, and declare, that as schoolmaster of the parochial school at
'in the parish of , and in the discharge of the said office, I will
'never endeavour, directly or indirectly, to teach or inculcate any opinions
'opposed to the divine authority of the Holy Scriptures, or to the doctrines
'contained in the Shorter Catechism agreed upon by the Assembly of
'Divines at Westminster, and approved by the General Assembly of the
'Church of Scotland, in the year one thousand six hundred and forty-eight;
'and that I will faithfully conform thereto in my teaching of the said
'school, and that I will not exercise the functions of the said office to the
'prejudice or subversion of the Church of Scotland as by law established,
'or the doctrines and privileges thereof.'

And the person elected to be schoolmaster, having made such productions and declaration, shall be furnished with an attestation to that effect subscribed by the said principal or professor, which attestation shall complete his right to the emoluments provided by this Act.

Presbytery of the Bounds may present a Complaint to Secretary of State against Schoolmaster.

13. It shall be competent for the presbytery of the bounds, or for the heritors, whensoever they shall see cause for instituting proceedings against the schoolmaster of any parish, for contravention of the said declaration, to present a complaint to one of Her Majesty's Principal Secretaries of State against such schoolmaster; and it shall be lawful to the Secretary of State thereupon to appoint a commission to inquire into the said charge, and to censure, suspend, or deprive such schoolmaster, as they shall find to be just; provided that no such sentence shall take effect until it has been confirmed and approved of by the Secretary of State.

Jurisdiction of the Presbytery in Cases of immoral Conduct or Cruelty transferred to the Sheriff.

14. So much of the twenty-first section of the said recited Act as provides that the presbytery shall take cognizance of, and, if they see cause, proceed by libel against any schoolmaster in respect of any complaint charging him with immoral conduct, or cruel and improper treatment of the scholars under his charge, is hereby repealed; and in lieu thereof it is hereby enacted,

that it shall be lawful to the heritors and ministers, or the clerk of the presbytery of the bounds, by the authority of the said presbytery, given on the application of the heritors and minister, or of any six heads of families in the parish whose children are attending the school, to make a complaint in writing to the sheriff of the county in which the school is situate, charging the schoolmaster with immoral conduct, or cruel and improper treatment of the scholars under his charge, and specifying in such complaint the particular Acts in respect of which the complaint is made; and a copy of such complaint shall be served upon the schoolmaster, who shall be required, on an inducias of fourteen days, to appear before the sheriff, by himself or his agent, to answer to the said complaint; and the schoolmaster accused shall, if he deny the charge, if he think fit, answer the particulars of the complaint, such answer to be in writing, and to be lodged within the said fourteen days, or may, when the cause comes to be tried, state his plea to be not guilty; and the sheriff shall thereafter proceed to the trial of the complaint, and take the evidence in the same way as and under the same rules as those which are in force in the sheriff court in regard to process in civil causes; and in the event that he shall find such complaint or any material and relevant part thereof to be proved, the sheriff shall give judgment accordingly, and shall pass such sentence of censure, suspension, or deprivation, as in his opinion the case requires, which sentence shall be final and not subject to review, and shall have all the effects consequent before the passing of this Act on any similar sentence of any presbytery under the provisions of the last recited section of the said Act, and no sentence of censure, suspension, or deprivation otherwise pronounced on such charges, shall be valid or effectual: Provided always, that where sentence of suspension shall be pronounced the salary of the schoolmaster in respect of his office shall cease and determine from the date of such sentence until the next term of *Whitsunday* or *Martinmas* following the expiration of the term of suspension specified in such sentence, and the salary accruing during the said period shall be applied by the heritors and minister towards providing a substitute for such schoolmaster during the period of the suspension.

Expenses incurred by the Complainers to be repaid out of the Rogue Money.

15. The sheriff shall by his decerniture ascertain and specify the amount of the expenses properly incurred by the complainers in the proceedings connected with any complaint against the schoolmaster of any parochial school; and the complainers shall be entitled to recover the amount so ascertained from the collector, and out of the readiest proceeds of the assessments commonly called the rogue money levied for the county within which the school is situate, under the provisions of an Act passed in the eleventh year of the reign of His Majesty *George* the First, chapter twenty-six; and the receipt of the agent of the complainers shall be a sufficient discharge to the said collector for any payments so made by him out of the said rogue money or assessments.

Repeal of Clauses of the recited Act requiring an Estimate of the Value of Grain to be made at successive Periods.

16. So much of the second section of the said recited Act as provides that where the salaries of parochial schoolmasters had been before the passing thereof payable in grain or meal such salary in grain or meal should continue to be paid, and also the third, fourth, and sixth sections of the said recited Act, shall be and are hereby repealed; and it is hereby de-

clared and provided, that the right of electing a parochial schoolmaster, *juro devoluto*, conferred by the fifteenth section of the said recited Act on the commissioners of supply of the county, after the expiration of four months from the time when the vacancy in any parochial school shall have taken place, shall not arise or accrue to the commissioners of supply until the expiration of six months from the time of such vacancy.

Schoolmaster's House to consist of Four Apartments.

17. Where in any parish it shall be necessary to provide a house for the parochial schoolmaster, in terms of the recited Act, and of an Act passed in the first and second years of the reign of Her present Majesty, intituled *An Act to facilitate the Foundation and Endowment of additional Schools in* Scotland, or either of them, such house shall consist of at least three apartments besides the kitchen.

Act not to interfere with Arrangements as to Retirement of Schoolmaster.

18. Nothing in this Act shall be held to interfere with any arrangement which may have been concluded between the heritors and schoolmaster of any parish for the retirement of such schoolmaster, except as regards the house and garden, and premises attached thereto, which shall in every case be made over at the term of *Whitsunday* next after the passing of this Act to the person actually discharging the duties of schoolmaster, and where the use of such premises may have formed part of a retiring allowance the heritors shall make reasonable compensation to the ex-schoolmaster.

Heritors and Ministers may permit or require Schoolmaster to resign.

19. In case it shall be found, on a report by one of Her Majesty's Inspectors of Schools, made on the application of the heritors of the parish, and concurred in by the presbytery of the bounds, that the schoolmaster of any parish is disqualified because of infirmity or old age for the due performance of the duties of his office, or that from negligence or inattention he has failed efficiently to discharge such duties, it shall be lawful to the heritors and minister, at any meeting called and held as aforesaid, to permit or require such schoolmaster to resign his said office, and in case of his refusal so to do to dismiss or suspend such schoolmaster, and when necessary to declare the school vacant; and in every case of such resignation the heritors and minister may grant to such schoolmaster a retiring allowance payable during the remainder of his life; provided that where such resignation shall not be occasioned by any fault on the part of the schoolmaster the heritors shall grant a retiring allowance the amount whereof shall not be less than two third parts of the amount of the salary pertaining to said office at the date of such resignation thereof, and shall not exceed the gross amount of such salary, which retiring allowance shall be payable in all respects in like manner with the salary of the schoolmaster; provided also, that no schoolmaster shall be suspended for a longer period than three months, or be dismissed for neglect of duty, excepting under the above provisions.

Minister and Heritors may grant annual Allowance to Schoolmaster, in addition to retiring Allowance.

20. In all cases in which the minister and heritors are by this Act empowered to provide a retiring allowance for a schoolmaster who shall resign or shall be removed from his office, it shall be lawful for them, if they see fit, to provide for such schoolmaster, in addition to such allowance, and in like manner, a further yearly sum, equal in amount to the annual value

of any dwelling-house and garden to which he may be entitled as such schoolmaster, as the same shall be valued by the assessor for the county.

20 & 21 Vict. c. 59. repealed.

21. The whole provisions of an Act passed in the twentieth and twenty-first years of the reign of Her present Majesty, chapter fifty-nine, intituled *An Act concerning the Parochial Schoolmasters in* Scotland, shall be and are hereby repealed.

Schoolmasters in Royal Burghs not to be required to sign Confession of Faith or Formula of Church of Scotland.

22. From and after the passing of this Act, it shall not be necessary for any person elected to be a schoolmaster of any burgh school to profess or subscribe the Confession of Faith, or the formula of the Church of *Scotland*, or to profess that he will submit himself to the government and discipline thereof, nor shall any such schoolmaster be subject to the trial, judgment, or censure of the presbytery of the bounds for his sufficiency, qualifications, or deportment in his office, any statute to the contrary notwithstanding; and this enactment shall be a sufficient defence in answer to any proceedings against any schoolmaster of any burgh school in respect that he has not made such profession or subscription.

Not to affect Provisions relating to Parochial Schools, &c.

23. Nothing herein contained shall repeal, alter, or affect the provisions of the recited Act, or of any other Act relating to parochial schools or schoolmasters in *Scotland*, excepting in so far only as shall be necessary to give effect to the provisions of this Act.

Short Title.

24. This Act may be quoted in all proceedings as "The Parochial and Burgh Schoolmasters (*Scotland*) Act, 1861."

SCHEDULE (A.)

DIVISION OF SCOTLAND INTO FOUR DISTRICTS IN CONNEXION WITH THE FOUR UNIVERSITIES.

ST ANDREWS.	GLASGOW.	ABERDEEN.	EDINBURGH.
All the parochial schools situate within any of the counties of Clackmannan and Kinross, Fife, Forfar, Perth.	All the parochial schools situate within any of the counties of Ayr, Argyll, Bute, Dumbarton, Dumfries, Kirkcudbright, Lanark, Renfrew, Wigton.	All the parochial schools situate within any of the counties of Aberdeen, Banff, Caithness, Elgin and Nairn, Inverness, Kincardine, Orkney and Shetland, Ross and Cromarty, Sutherland.	All the parochial schools situate within any of the counties of Berwick, Edinburgh, Haddington, Linlithgow, Peebles, Roxburgh, Selkirk, Stirling.

IX.

RULES AND DIRECTIONS FOR THE FIRST ELECTION OF SCHOOL BOARDS IN PARISHES NOT BEING BURGHAL PARISHES, AND IN SCHOOL DISTRICTS.

For the interpretation of the rules for elections in parishes and districts, cf. the cases :—

Armour *v.* Miller (timeous reception of a nomination paper), p. 251.
Peter M'Gilvray (error as to notice), p. 252.
Fordoun Case (withdrawal of Candidate), p. 252.
Edderton Case do. do. p. 253.
Edinburgh Case—Opinion of Counsel, p. 253.

In accordance with the provisions of "The Education (Scotland) Act, 1872" [35 & 36 Victoria, cap. 62, passed 6th August], which requires that "within twelve months after the passing of this Act, a school board shall be elected in and for each and every parish" in Scotland, the following rules and directions are hereby prescribed for the conduct of the first election of the school boards :—

Time for Election of School Board.

1. In each parish, the time fixed for the first election of a school board, shall be not less than twenty-one days after the meeting held by the heritors and minister for the appointment of a returning officer, and for fixing the time and place of such election.

Publication of Time and Place of Election, and of Person to be Returning Officer.

2. Publication of the time and place fixed for the election, and of the person appointed to be returning officer, shall be made by notices affixed to the doors of the parish church, and of all the other places of worship, and of all public or State-aided schools within the parish.

Polling Places.

3. In a parish where the extent or other circumstances render it necessary, the returning officer shall appoint a sufficient number of polling places situated conveniently for the voters, and shall prepare a list of the voters who are to vote at each polling place.[1] No public-house shall be used for a polling place or for the purposes of an election.

[1] The English rules corresponding to this are as follows: The returning officer shall determine the number and situation of the polling places, and for the purposes of this election may cause the parish to be divided into polling districts. The said officer shall cause the boundaries of such districts, and the number and situation of the polling places, to be published not less than *three* clear days before the day fixed for the election.

If the parish is divided into polling districts, each voter shall give his vote in the polling district in which the property in respect of which he is entitled to vote is situate; and if it is situate in more than one polling district, he shall vote in any one of the polling districts in which it is situate.

Notice by Returning Officer.

4. Fourteen days before the day fixed for the election, the returning officer shall cause notices to be affixed to the doors of the parish church, and of all the other places of worship and of all public or State-aided schools within the parish, specifying the day, hour, and place or places for polling; and when there is more than one polling place, the districts for which each polling place is assigned; and the number of members to be elected to the school board.

Nomination of Candidates.

5. Not less than ten days prior to the day of election, any two electors of the parish[1] may nominate as a candidate any person of full age, by sending to the returning officer, or delivering at his place of residence, a nomination paper, subscribed by said two electors, and stating the Christian name and surname, with the place of abode and designation, of each subscriber, and of the candidate nominated. And the returning officer, on receipt of the same, shall forthwith send notice of his nomination to each candidate.

Time for Nomination.

6. No nomination paper shall be received after four o'clock in the afternoon of the tenth day before the day of election, and no person shall be a candidate unless he has been nominated within the time and in the manner aforesaid.

Validity of Nominations.

The returning officer shall have power to decide whether any nomination is valid, and his decision shall be final.

Notice of Names, &c. of Candidates.

7. Seven[2] clear days before the day fixed for the election, the returning officer shall give public notice of the names, designations, and places of abode of the several candidates nominated as aforesaid, and not withdrawn, by affixing a list of the same to the doors of the parish church, and of all the other places of worship and of all public or State-aided schools within the parish, and in such other manner as he may deem necessary to ensure publicity.

Procedure where Number of Candidates accords with Number of Members to be Elected.

8. If the number of candidates nominated and not withdrawn shall equal but not exceed the number of members to be elected, it shall be notified by the returning officer, in publishing the names of the candi-

[1] The same persons are not precluded from nominating more than one candidate.
[2] Eight days are allowed in English parishes. Candidates may be withdrawn six days before election.

dates so nominated, that as the number of candidates accords with the number of members to be elected, there will be no poll, and that on the day of election these candidates will be held to be duly elected.

Procedure when due Number of Candidates not Nominated.

9. If the due number of candidates has not been nominated, the returning officer shall report to the Board of Education that no election has taken place.

Procedure when Number of Candidates exceeds Number of Members to be Elected.

10. If, seven clear days before the day fixed for the day of election, the number of candidates nominated and not withdrawn shall exceed the number of members to be elected, the returning officer shall forthwith proceed to make arrangements for a poll by ballot in the manner prescribed in Schedule A.; and on the day of election, the returning officer, or such person or persons as may be appointed by him for this purpose, shall proceed to take and collect, by ballot, the votes of the electors in the manner prescribed in said schedule.

Hours of Polling.

11. The poll shall open not later than twelve o'clock noon on the day appointed, and shall not remain open for a longer period than six hours.[1]

Method of counting Votes.

12. If the votes have been taken at more than one polling place, they shall be counted, not separately, but for the parish as a whole.

Notice of Members elected; Return sent to Board.

13. Within three clear days after the day of election, the returning officer shall affix to the doors of the parish church, and of all the other places of worship, and of all public or State-aided schools within the parish, a list of those persons as members of the school board who have been returned without a poll; or those who in case of a contest have had a majority of votes; and shall make a return of the names of said members to the Board of Education.

Preliminary Procedure in case of United Parishes.

14. When for the purposes of "The Education (Scotland) Act, 1872," the Board of Education shall have united two parishes, the returning

[1] The corresponding rule in the English rules is: "The poll shall commence at such an hour not earlier than 8 A.M., and close at such an hour not later than 8 P.M., as shall be fixed by the returning officer; but the poll shall not be open for more than seven hours."

In England the returning officer is bound to keep the voting papers for six months.

officer shall be appointed, and the time and place for the election of a school board shall be fixed at a joint meeting of the heritors and ministers of these two parishes.

Preliminary Procedure in case of quoad sacra *parishes.*

15. When two or more parishes, or parts of parishes, are now united and formed into a parish *quoad sacra*, the heritors who are proprietors of lands within said parish to the extent of at least one hundred pounds Scots of valued rent, appearing in the Land Tax books of the county or counties within which such parish is situated, along with the minister of such *quoad sacra* parish, shall meet as soon as conveniently may be, and fix a time and place for the election of a school board, and appoint a fit and proper person to be returning officer at the election.

Preliminary Procedure in case of School Districts.

16. When the school boards of two or more adjoining parishes shall deem it expedient to separate and detach certain portions of these parishes from the parishes to which they respectively belong, and to unite them together and form them into a school district, the Sheriff of the county, when he intimates his consent and approbation to such arrangement, shall fix a time and place for the election of a school board for such school district, and shall appoint a fit and proper person to be the returning officer at the election, which in all other respects shall take place according to the foregoing rules.

By order of the Board of Education for Scotland.

JAMES TAYLOR, *Secretary.*

SCHEDULE A.

For the interpretation of rules for taking votes by ballot, cf. the cases :—

Fraser *v.* Hislop, . .	(Screening voters), p. 254.
Whitburn Case, . . .	(Candidate—presiding officer), p. 254.
Forteviot Case, . . .	(Declaration of secrecy), p. 254.
Lerwick Case, . . .	(Private mark), p. 255.
Uphall Case, . . .	,, ,, p. 255.
Tulliallan Case, . . .	(Marking ballot paper), p. 255.
Kinloch Rannoch Case, .	,, ,, p. 256.
Newlands Case, . . .	,, ,, p. 256.
Abernethy Case, . .	(Declaration of identity), p. 256.
Traquair Case, . . .	(Identification), p. 257.
Kettle Case, . . .	,, p. 257.
Strathmiglo Case, . .	,, p. 257.
Tulliallan Case, . . .	(Blind and illiterate voters), p. 257.
Uphall Case, . . .	,, ,, p. 257.

The following cases decided under the Ballot Act are also important:—

Stranraer Case, . . .	(Marking ballot paper), p. 258.
Birmingham Case, . .	,, ,, p. 259.
Musselburgh Case, . .	,, ,, p. 259.

Rules and Directions for taking Votes by Ballot in Parishes and School Districts.

1. *Preparations of Poll.*—The returning officer shall provide a ballot box so constructed that a ballot paper can be introduced therein, but cannot be withdrawn without the box being unlocked; a sufficient number of printed ballot papers, containing, in the form annexed, the names of the candidates; materials for the marking of the votes on the ballot papers, sealing wax, and a copy of the Valuation Roll of the parish, or school district; and shall cause one compartment or more to be fitted up in the polling place, in which the voter shall be screened from observation while marking his ballot paper. Provided that in any parish situated in the counties of Argyll, Inverness, Ross and Cromarty, and Orkney and Shetland, the returning officer may use written voting papers,[1] in the form hereinafter prescribed.

2. *Persons entitled to attend at the Polling Place.*—The only persons entitled to be present within the polling place are the returning officer and his clerks, and the candidates, or the persons whom they shall authorise in writing under their hand to represent them.

3. *Declaration of Secrecy.*—Before the opening of the poll, the returning officer, and every person authorised to be present within the polling place, or at the counting of the votes, must have made before a justice of the peace the following declaration of secrecy:—

> I solemnly promise and declare that I will not communicate, except for some purpose authorised by law, any information as to the persons who have voted or not voted, or as to the candidates for whom any vote has been given, at the election for a school board in this parish [or school district].

The returning officer shall not permit any person who has not made the above declaration of secrecy to attend within the polling place.[2]

4. *Commencement of Poll.*—Before the commencement of the poll, the returning officer shall show the ballot box, empty, to such persons as may be present, and then lock it up and seal it. He shall then place it near him, and keep it within his view.

5. *Mode of Voting.*—When any person comes up to vote, the returning officer shall ascertain that the person is entitled to vote; and if so, the returning officer shall deliver to the voter a ballot paper, call out his name and description, as stated in the Valuation Roll, place against the name of the voter a mark, which will denote that the voter has received a ballot paper, but not denote the particular ballot paper which he has received.

The voter, having received his ballot paper, shall proceed at once to the compartment, and shall there, either in figures or by crosses, secretly insert opposite the names of the candidates for whom he votes the number of votes he gives to each. He shall then fold up his ballot paper so as to conceal the figures or crosses which he has inserted, put

[1] "Voting papers"—this should be "ballot papers." The form hereinafter prescribed is called a "ballot paper."

[2] It is not necessary to make this declaration at the polling place. A certificate, or other evidence that will satisfy the returning officer that the person applying for permission to enter has made the declaration before a justice of peace, will be sufficient.

the ballot paper so folded at once into the ballot box, and immediately leave the polling place.[1]

6. *Order within the Polling Place.*—The returning officer shall make arrangements for preserving order within the polling place; and shall regulate the admission of electors, so that those voting shall not be liable to be overlooked or otherwise put to inconvenience; and shall see that each voter retires immediately after giving his vote.

7. *Validity of Votes.*—Any ballot paper on which votes are given to more candidates than the voter is entitled to vote for, or on which anything is written or marked by which the voter can be identified, shall be invalid and not counted.

8. *Proceedings at close of Poll.*—Immediately after the time fixed for the close of the poll, the returning officer, in presence of the candidates or the persons authorised to represent them, shall break the seal, open the box, examine the ballot papers, and record the number of votes for each candidate. He shall then make up the whole of the ballot papers into a packet, and shall write on the outside of the packet a description of its contents, the date of the election, and the name of the school board, and shall seal up and preserve the same.

9. *Proceedings where there is more than one Polling Place.*—

(*a*) If there be more than one polling place appointed for a parish or school district, the returning officer shall appoint for each polling place a presiding officer, who shall conduct the taking of the votes in all respects in conformity with the foregoing rules.

(*b*) The returning officer shall deliver to the presiding officer, along with the other necessary materials for voting, a certified list, taken from the Valuation Roll, of the persons entitled to vote at each polling place.

(*c*) At the close of the poll, in the presence of the candidates or the persons authorised to represent them, the presiding officer shall seal with his own seal, and the seals of such candidates as desire to affix their seals, the ballot box in use at his polling place unopened, but with the key attached, and shall deliver the box as soon as practicable to the returning officer.

(*d*) The returning officer shall make arrangements for counting the votes in the several ballot boxes in the presence of the candidates or the persons authorised to represent them, as soon as practicable after the close of the poll, and shall give to the candidates notice of the time and place at which he will begin to count the same.

(*e*) Before beginning to count the votes, the returning officer shall, in the presence of the candidates or the persons authorised to represent them, open the ballot boxes, and then mix together the whole of the ballot papers contained in the ballot boxes.

[1] There is no provision to enable illiterate voters to get assistance in recording their votes. Any explanations, therefore, should be given to such voters before they enter the polling place.

FORM OF BALLOT PAPER.

*Parish of*_____, *County of*_____

N.B.—Every Voter is entitled to votes, and may give all such votes to one Candidate, or may distribute them among the Candidates, as the Voter sees fit.

	NAMES OF CANDIDATES.	Spaces for the Insertion of Figures or Crosses.
1	**BURNS.** ROBERT BURNS, Farmer, Mossgiel, Mauchline.	
2	**CHALMERS.** Rev. THOMAS CHALMERS, Kilmany, Cupar-Fife.	
3	**ABERDEEN.** The EARL of ABERDEEN, K.G. and K.T., Haddo House, Aberdeen.	
4	**SMOLLETT.** TOBIAS SMOLLETT, M.D., Dalquharn, Renton.	
5	**ERSKINE.** Rev. EBENEZER ERSKINE, Portmoak, Kinross.	
6	**SCOTT.** WALTER SCOTT, Advocate, Ashiestiel, Galashiels.	
7	**LEIGHTON.** The Rev. ROBERT LEIGHTON, Newbattle, Dalkeith.	
8	**SMEATON.** JOHN SMEATON, Millwright, Jedburgh.	
9	**SMITH.** ADAM SMITH, A.M., High Street, Kirkcaldy.	

By Order of the Board of Education for Scotland,

James Taylor, *Secretary.*

Rules and Directions for the First Election of School Boards in Burghs.

In accordance with the provisions of "The Education (Scotland) Act, 1872" [35 & 36 Victoria, cap. 62, passed 6th August], which requires that "within twelve months after the passing of this Act, a school board shall be elected in and for every burgh" in Scotland, the following rules and directions are hereby prescribed for the conduct of the first election of the school boards :—

Time for Election of School Board.

1. In each burgh, the time fixed for the first election of a school board shall be not less than twenty-one days after the meeting held by the town council, or the municipal or managing body, as the case may be, for the appointment of a returning officer and for fixing the time and place of such election.

Publication of Time and Place of Election, and of Person to be Returning Officer.

2. Publication of the time and place fixed for the election, and of the person appointed to be returning officer, shall be made by advertisement in the local newspapers or otherwise.

Polling Places.

3. In a burgh where the population or other circumstances render it necessary, the returning officer shall appoint a sufficient number of polling places,[1] situated conveniently for the voters, and shall prepare a list of the voters who are to vote at each polling place. No public-house shall be used for a polling place, or for the purposes of an election.

Notice by Returning Officer.

4. Fourteen days before the day fixed for the election, the returning officer shall give public notice, by advertisement in the local newspapers or otherwise, of the day, hour, and place or places, for polling, and where there is more than one polling place, of the district for which each polling place is assigned, and of the number of members to be elected to the school board.

Nomination of Candidates.

5. Not less than seven[2] days prior to the day of election, any two electors of the burgh[3] may nominate as a candidate any person of full age, by sending to the returning officer, or delivering at his office or

[1] By the English rules the returning officer is bound to publish the number and situation of the polling places three days before the election.

[2] Ten days are allowed in English boroughs.

[3] The same persons are not precluded from nominating more than one candidate.

place appointed by him, a nomination paper, subscribed by said two electors, and stating the Christian name and surname, with the place of abode and designation, of each subscriber, and of the candidate nominated. And the returning officer, on recept of the same, shall forthwith send notice to each candidate of his nomination.

Time for Nomination.

6. No nomination paper shall be received after four o'clock in the afternoon of the seventh day before the day of election; and no person shall be a candidate unless he has been nominated within the time and in the manner aforesaid.

Validity of Nomination.

The returning officer shall have power to decide whether any nomination is valid, and his decision shall be final.

Notice of Names, &c., of Candidates.

7. Four[1] clear days before the day fixed for the election, the returning officer shall give public notice, by advertisement in the local newspapers or otherwise, of the names, designations, and places of abode of the several candidates nominated as aforesaid, and not withdrawn.

Procedure where Number of Candidates accords with Number of Members to be Elected.

8. If the number of candidates nominated and not withdrawn shall equal but not exceed the number of members to be elected, it shall be notified by the returning officer, in publishing the names of the candidates so nominated, that as the number of candidates accords with the number of members to be elected, there will be no poll, and that on the day of election these candidates will be held to be duly elected members of the school board.

Procedure where due Number of Candidates not Nominated.

9. If the due number of candidates has not been nominated, the returning officer shall report to the Board of Education that no election has taken place.

Procedure where Number of Candidates exceeds Number of Members.

10. If, four clear days before the day fixed for the day of election, the number of candidates nominated and not withdrawn shall exceed the number of members to be elected, the returning officer, or such person or persons as shall be appointed by him for the purpose, shall on the day of election proceed to take and collect, by ballot, the votes of the electors, in like manner as a poll at a contested municipal

[1] Eight days are allowed in English boroughs. Candidates may in England be withdrawn after nomination six days before election.

election is directed, by the Ballot Act, 1872, to be taken; and, subject to these rules and directions, the provisions of that Act shall apply to the election of a school board, with the substitution of the term "school board election" for the term "municipal election."[1]

Method of Counting Votes.

11. If the burgh has been divided into wards or sections for the purposes of the election, then the votes in each ward or section shall be collected and counted, not separately, but for the burgh as a whole.

Notice of Members Elected; Return sent to Board.

12. Within three clear days after the day of election, the returning officer shall, by advertisement in the local newspapers or otherwise, publish a list of those persons as members of the school board who have been returned without a poll, or those who, in case of a contest, have had a majority of votes; and shall make a return of the names of said members to the Board of Education.[2]

By order of the Board of Education for Scotland,

JAMES TAYLOR, *Secretary.*

X.

ADDRESS ON EDUCATION.

DELIVERED AT THE MEETING OF THE SOCIAL SCIENCE ASSOCIATION AT ABERDEEN, 1877, BY THE RIGHT HON. GEORGE YOUNG (LORD YOUNG, LATE LORD ADVOCATE), AND REVISED BY THE AUTHOR.

In considering what particular topics connected with the general subject of this section it was most fitting that I should deal with in my introductory address, I have borne in mind that the probable, or certain, reason why I was chosen for the position which I now occupy is the part which I had in preparing and carrying through Parliament the Scotch Education Act of 1872. There is no other fact in my life which identifies me with the subject of education, or gives me any right to

[1] The corresponding rule in the English rules is as follows: "The poll shall commence at such an hour, not earlier than 8 A.M., and close at such an hour, not later than 8 P.M., as shall be fixed by the returning officer; but the poll shall not be open for more than seven hours."

The rule of the Ballot Act with regard to illiterate voters applies in burghs, though no provision is made to meet their case in parishes.

[2] In the English rules it is provided that the returning officer shall deliver the voting papers to the town clerk, to be kept for six months among the records of the burgh.

solicit attention to my views upon it; and I acknowledge the truth at the outset of my remarks to modify your expectations, if that be necessary, and to bespeak the indulgence which is seldom withheld from those who make no undue professions.

You are doubtless prepared by what I have said to hear the Act of 1872 announced as the text of my discourse, and to conclude that I have chosen it for these two reasons, which, if they run into each other, are only on that account the more likely to be valid—viz., *first*, that I am presumably more competent to deal with it than with any other within the range necessarily prescribed to me; and *second*, that on the ground which it maps out I am more likely than on any other to satisfy the reasonable, and I hope moderate, expectations of those who are responsible for giving me the opportunity of addressing you.

You will, however, be good enough to bear in mind, what is weekly illustrated to you, that texts are naturally elastic, and to consider, if you please, that it is especially fitting that the text of an introductory discourse should be so. Mine—the reading of which you will, I am sure, gladly dispense with—is so comprehensive, that the preacher may without wandering from it touch upon almost anything within the limits of the subject to which this section is devoted. I notice this, not because I am naturally disposed to be erratic, or now foresee that I shall be so, but to warn you that I consider it within my province and the bounds of the subject which I have specially chosen to submit views and offer suggestions on anything relating to education.

The laws and practice of Scotland in this matter prior to 1872 are too familiar to you, at least in their results, to render it necessary for me to detain you with even a general account of them. I may, however, be permitted to observe, that the establishment and maintenance in each parish of a school, which, however humbly or parsimoniously equipped, was open to all, and of which all might avail themselves at a cost which was only just sufficient to exclude the notion of charity, had effects the value and importance of which it is impossible to exaggerate. The circumstances of the country, and more particularly the character of the Presbyterian Church and the classes of the people to which its modest livings—the ambition for distinction in its pulpits—and the desire to serve God and do good to man in the exercise of its ministry, were chiefly attractive, long powerfully and conspicuously operated to furnish the parish schools with teachers who, in point of scholarship, were qualified to be charged with the higher forms of a classical school. They were young men struggling with poverty on their way upwards from a labourer's cottage to a parish manse. Some achieved success and became lights in the Church—not a few of them the most brilliant; while others stuck on the way and settled down for life as masters of the little schools which they had intended should be for them only resting stations by the roadside on the forward journey which they contemplated.

I will not here stop to point out and balance the advantages and disadvantages to education of this state of things, which was not designed, but arose and grew naturally out of circumstances. I may, however, point out that, like other natural growths, it was accompanied by a tendency to self-perpetuation while the circumstances that gave rise to it continued, and that this tendency had itself a great influence on the teaching and character of the parish schools.

It was in these schools that such teachers as I now refer to were

themselves first taught by precisely such teachers as they afterwards became, and it was only natural that they should sympathise with those who, whether from their own natural inclinations and aptitudes or the wishes of others, were then entering on the same course which they had followed. To assist and bring forward such was to them a labour of love, and more congenial to their tastes and accomplishments than the humbler duties of their schools. I am not insinuating that these last were neglected, and I do not even suggest that the hazard of the competition, which is obvious enough, was not compensated by the advantage, equally obvious, to the whole school of possessing a scholarly teacher, who could discover and lead forward such of the children as might be capable of profiting by the higher instruction which he was competent to give. One manifest and direct effect of the system—and I do not regard it as slight or unimportant—was to make the parish schools very available as nurseries for the ministry of the Presbyterian Churches. To a lesser but still quite appreciable extent they were, owing to the same cause, exceptionally (compared with other schools of the same general character) available for the early growth from the humblest classes of some who had ability and energy to rise therefrom to professional life other than the clerical. That there was advantage in all this no one will deny, although some will be found who think, perhaps not unreasonably, that it was gained in practice at the cost of some, and that not inconsiderable, loss to the vast majority of those for whose benefit the parish schools existed.

But the great benefit to the community of the parish school system consisted in the public opinion which it created, and which accompanied it from the first and throughout, that it was the duty of every parent to send his children to school. This, like every other genuine and wholesome public opinion, was enforced by the public, or, I should perhaps rather say, was self-acting and enforced itself. The school was there available to all, and every one felt that he would be acting unworthily and so as to incur the reprobation of his neighbours, if he did not avail himself of it. The result was that this influence of the common view and opinion of a parent's duty operated as a compulsory law upon those, and they were few, who did not share it. They could not afford to incur the contempt of their neighbours. Great towns, and large but thinly-peopled Highland parishes, are for obvious reasons exceptional,—but excepting these (though only partially), and confining the observation to the rural and village population of the Lowlands, I venture to assert that for many generations there have been few parents who would not have thought it shame to leave their children altogether uneducated, and that these few were held in little esteem by their neighbours.

In the towns the legal provision for education was scant and imperfectly enforced. It consisted simply in this, that every royal burgh was required to establish and maintain a burgh school out of the common good—that is, the property held under its charter of erection. This duty was discharged to some extent in most towns, and in some towns well and efficiently; but the law, which was somewhat vague, was laxly, and never, that I know of, otherwise than incidentally, and I might say accidentally, enforced. Nevertheless we can point with satisfaction and even pride to several burgh schools, and justly pronounce them to be first-rate classical and commercial academies. As was to be expected,

the legal provision was in towns supplemented to a considerable extent by pious foundations and by voluntary enterprise.

It would be unjust not to notice the great addition to the educational provision of the country which was made by the Free Church after the disruption of 1843. It may be that the geographical proximity of the schools planted by this Church to the pre-existing parish schools has to some suggested the suspicion that a spirit of ecclesiastical rivalry had some influence upon the costly and energetic efforts made to promote education. For my part, I shall only say that I wish all ecclesiastical rivalry was directed to so good an end and with similar success. When I had occasion to study the reports, and the accompanying statistics of the Education Commissioners which preceded the recent legislation, and to note the deficiency, approaching in some places to destitution, of the means of education throughout the country, I did not fail to appreciate the debt of gratitude which the country owed to the Free Church, but for whose voluntary efforts during a period of a quarter of a century the deficiency and destitution reported must have been so much greater than it was. It is true, no doubt, that the benefit to the country was not commensurate to the cost of affording it—that is to say, that the Free Church schools would have been productive of more good had they been planted with a greater regard to the needs of the people than was perhaps compatible with the ecclesiastical views of those who instituted them, which apparently required that they should compete with rather than aid and supplement the parish schools, then associated, as you know, with the Established Church. This affords no cause of complaint or reproach against the Free Church, although from my present point of view I may be excused for noticing the consequences with regret.

I shall only remind you generally of the agitation of many years which preceded the legislation of 1872. We possessed a national system of education—national in the most proper sense of the term, for it extended over the whole kingdom, town and country, and was available to all without exception. But it was old, and therefore (having regard to the history of the country) necessarily ecclesiastical; and notwithstanding some amendments had remained substantially stationary, which the country and the people had not by any means. In short, the country with respect to its educational equipment might be compared to a child that had grown out of its clothes. The garments had been patched and let out two or three times, but the growth of the body had at last become too great for such thrifty remedies, and the deficiencies so conspicuous that a new suit was needed and loudly called for. But what was to be the cut or pattern? Here was, of course, room for serious discussion in the family, and there was assuredly a great deal. Some were for exactly copying the old suit, only making the new one larger; while every sort of novelty found more or less favour with others. The result was necessarily a compromise; and now that five years have elapsed since the new clothes were sent home and have been in wear, I venture to assert that they fit pretty well, and are an improvement on the old in both appearance and comfort.

I will not consume your time unprofitably with even a slight sketch of the scheme of the Act of 1872. The most important features of it, in my judgment, are these two, viz.: 1st, That the pre-existing educational provision of the country is thereby largely, and, I believe, for the

present, sufficiently increased, while machinery is provided without the necessity of any further resort to Parliament of extension, or, if need be in any locality, of contraction according to the varying circumstances of times and places; and 2d, That the schools which it comprehends are thereby dealt with as popular schools—that is to say, as schools to be maintained and managed by those who have the benefit of them, and are therefore immediately interested in their efficiency.

On each of these two great features of the Act I have a few remarks to make.

1. By clause 26 of the Act it is enacted that "There shall be pro- "vided for every parish and burgh a sufficient amount of accommodation "in public schools available for all persons resident therein for whose "education efficient and suitable provision is not otherwise made, and "when a sufficient amount of such accommodation is not afforded in "any parish or burgh, it shall be the duty of the school board thereof "to supply the deficiency in the manner provided by this Act." Such a duty—the means of performing it being afforded—was not likely to be neglected, but it was nevertheless thought a prudent precaution to provide a compulsitor in case of need. This was originally proposed to be done by conferring upon the Education Department of the Government of the day a certain power of control which was in the result conferred, in the first instance, on the Board of Education, but to pass to the Government when that Board should cease to exist. I take especial notice of this power of control, because it is the only noticeable exception to the supremacy of the school boards in the performance of the duties committed to them. I am not now called on to support the exception by argument, and only venture to observe that the subject of it seems to be of an exceptional character; and that although it may be true, as I believe it is substantially and on the whole, that the school boards have hitherto discharged the duty in question intelligently and liberally without any impulse from without, it does not follow necessarily that the results would have been equally satisfactory had a remedy for neglect not been provided. It is also obvious to remark that at the outset of the new system, when new schools were to be established in great numbers, the advantage of being able to consult with a central board, whether a department of the Government or otherwise constituted, was one to which school boards were reasonably entitled, and by which they have, no doubt, in fact greatly profited.

I will not confuse you with statistics in order to show the increase which has, under the provisions of the Act, been made to the educational establishment of Scotland during the last four years. A very few facts and figures will suffice to show how great that increase has been. Between 1872 and 1876 646 new schools have been built, and nearly as many more have been resolved upon by the school boards and sanctioned by the Board of Education, while about 400 schools have during the same period been enlarged, and the enlargement of above 100 more has been resolved on and sanctioned. To meet the expense of these building operations the school boards, besides direct payments from the rates, the amount of which I am unable to state, had, up to December 1876, exercised the borrowing powers conferred on them by the Act to the amount of £1,851,350. The Government building grants have been as follows:—

For the year ending March	1876, . . .	£77,846.
"	1877, . . .	130,000.
" (As voted)"	1878, . . .	145,000.

These figures show that the operations under the Act have been vigorous and on a great scale, and also, unless the expenditure has been extravagant, which is not presumable, that the pre-existing educational provision was very inadequate.

Contrasting the year 1873 and 1876, it appears that the schools under inspection in the latter exceeded those of the former by 816; that there was accommodation for 164,305 more scholars in the latter year, and that the average attendance exceeded that of the former by 120,480.

I trouble you with only one other contrast,—taking the three sources of the school fund—viz., rates, fees, and Government grant—as one, giving you round numbers, and contrasting only the years 1874 and 1876. In 1876 the excess over 1874 was, *in the rate*, above £100,000; in the school fees above £40,000; and in the Government grant (excluding building grant) above £80,000. In the latter year the school funds of all the school boards derived from these three sources amounted to within a fraction of £650,000, and it is a safe prediction that it will steadily increase. No account is here taken of pious or charitable endowments, or of the revenues of the higher-class schools, which, although under school boards, do not share in the rates or Government grants. In the last report of the Board of Education the revenue of the higher-class public schools is stated at £34,269.

It is, I think, impossible to attend to these figures without being persuaded that we are now provided with a mighty engine of public education in Scotland; that the ratepayers show no disposition to be niggardly, or Parliament to be illiberal; and that parents are willing to pay according to their ability for the education of their children. But is this great machine, whose pulsation is felt in the crowded lanes of our populous towns, in the quiet parishes of the Lowlands, in Highland valleys, and in remote islands, used to the best advantage? If it is not, we are not guiltless, for the direction of it is with ourselves.

The policy of the Act is that the public schools of each school district shall be maintained and managed by the people of the district who are immediately interested in their welfare. I will never, I believe, admit that the people of a Scotch parish or burgh are incompetent to choose a board of managers, who may be safely and advantageously intrusted with the management of their own schools, or that the managers of their choice require to be put under the supervision and control of any central authority. What I now say implies no opinion on the question whether the Board of Education for Scotland ought to be continued or not; for that Board has no power to supervise or control school boards in their school management. I understand and appreciate the arguments in support of the view that the Parliamentary grant would probably be better administered by a Scotch Board than by a department of the Government of the day; and I also understand and appreciate the arguments on the other side, although I find it unnecessary here to enter on them or to express an opinion on the subject which they regard. That subject is as foreign to the supremacy of the school boards as is the constitution of the Baird Trust or the

conditions on which grants from a charity may be given, and the body to which is intrusted the declaration and enforcement of those conditions. As the law now stands, Parliament intrusts the Executive Government with the distribution of certain sums annually voted to aid education in such public (and private) schools as may be willing to accept of such aid on the terms which the Government prescribes as the conditions of affording it. In prescribing and enforcing these conditions the Government acts under the usual responsibility of every Government to Parliament, and there is undoubtedly much to be said in favour of this system. It may be, however, that Parliament would act with wisdom if, with respect to Scotland, it committed the trust, not to the Government but to a board in Edinburgh or elsewhere in Scotland. On this I express no opinion. I must, however, emphatically protest against any proposal to subject school managers, whether school boards or others, to direct supervision or control by Government or other central authority. I say *direct* control, because it is manifest that any body or individual having money to distribute may and must exercise an indirect, though quite legitimate control, on those who wish to have a share of it.

It does not really affect the views which I have expressed that in certain matters—one of which I have already adverted to—advantage is conveniently taken of the existence of a Government department or Board of Education to which resort may be made in matters where some check or power of control is, or possibly may be, exceptionally needed. I might point out in detail what I exactly mean, but it is, I am persuaded, unnecessary, and would be tedious. Let me only, in conclusion on this topic, counsel school boards and their constituencies to hold by the independence which the statute has given them. One particular subject connected with it, and that probably the most important, I ought perhaps not to omit. I refer to the appointment and removal of teachers. It is not surprising that teachers should desire security of tenure. It is always a natural desire; and the parish schoolmasters of Scotland had, in fact, a freehold in their offices; and the people of Scotland, however they may have suffered from the fact, were so used to it that many regarded the change effected by the Act of 1872 as a rather violent innovation on the established and natural order of things. Then it is so easy to make a plausible special case for teachers. They are, or ought to be, wiser and certainly more learned than the average parent. The father, and still more the mother of a dull, idle, or bad boy may be sensitive, partial, and unjust, and harbour an ill-feeling against a conscientious teacher who has done his duty, and not rest till he has got him dismissed by a board of which he may be a member, or of which he may be an influential and active constituent. Sensible men will smile at such an argument, but I assure you that it was addressed to me quite seriously and earnestly a score of times by schoolmasters individually and in deputations. It was in vain with them to urge the experience and practice of other countries—especially of England, where schoolmasters were treated exactly like other people. Of course private officials, such as agents, factors, bank managers, railway managers, the officers of assurance companies, and suchlike, were not to the purpose at all. The only case which they thought really formidable was that of the Free Church school teachers, who were all hired by the half-year, and who nevertheless had practi-

cal security of tenure so long as they behaved well and were efficient. The old prejudice has been greatly shaken, and the only demand now is for a check upon capricious removal. I must admit that such removal is possible, and may sometimes occur—just as it is possible and may occur in any department of business. But admitting this, I cannot think it doubtful that the retention of inefficient teachers will always, as human nature goes, be much more frequent than the unjust dismissal of efficient teachers, and that the retention of a teacher against the will of his school board by the controlling power of a central authority would be an evil of dimensions out of all proportion to the risk of rare and exceptional unjust dismissal. Take any public school in England or Scotland; take, for instance, Fettes College. It is conceivable, however improbable, that the managing body may act capriciously and unjustly towards a teacher. It is a trifling risk; but suppose it were ten times as great as it is, what would be the position of the managing body, and consequently of the school, if teachers in whom they had, rightly or wrongly, lost confidence, were retained in spite of them by some foreign authority. It is perhaps unlikely that the power of control, if vested in a body of sensible men, such as a Government department or central board would probably consist of, would be exercised often or improperly; but I venture to think that its existence would constantly and mischievously operate to impair the authority and diminish the responsibility of the proper managers of the schools. It seems to me that the power to appoint and remove teachers is involved in the notion of school management, and that a managing body to which this power was denied could not be held responsible for the efficiency of the school. The directors of a railway company, or of a bank or insurance office, or any institution you choose to instance in, must, as the condition of their responsibility, have the direction and control of all the officials from the manager downwards; and the sure and certain knowledge that this is the relation in which the *employés* stand to their directors, is not merely conducive, but, generally speaking, essential to the smooth and satisfactory conduct of business. I am not myself able to perceive any reason for regarding shools as exceptional in this respect; and I am fortified in my opinion that there is none, by the fact that such an idea has not occurred except with reference to a certain class of schools in Scotland.

I may here observe, and I do so with satisfaction, that apart from this question of tenure, on which I have no more to say, the schoolmasters of Scotland taken as a body are not only much better off than they ever were prior to the Act of 1872, but, without making comparison with the former state of things, are well and liberally treated by the school boards under the Act. The number of certificated teachers employed in State-aided schools has been nearly doubled since 1872, while the average emoluments of each have been increased above 30 per cent. The greater number of them have salaries ranging between £75 and £200, while some have over £300. The average salary is £131, 9s. In England the average is only £112, 2s. 1d., and I venture to say that it is the only case in which Scotch officials are better paid than the corresponding officials in England. In all other departments the reverse is commonly, I might say universally, the case. I have been speaking of schoolmasters. The average salaries of schoolmistresses have, since the Act of 1872, advanced about 20 per cent, and are greater

than the corresponding salaries in England. I notice these facts with pleasure, because they realise the expectations which I had formed and expressed when the measure was before Parliament, and justify the resistance which I offered to the proposal so frequently urged upon me in the supposed interest of teachers to fix a statutory *maximum* and *minimum* salary.

I pass now to the subjects of instruction in the statutory schools. And here I must warn you that I shall probably press harder than I have hitherto done on the elasticity of my text, although I shall still adhere to it in the main by dwelling chiefly on the law of the matter as it stands on the statute (which you will remember I gave out as my immediate subject), and the power thereby conferred on the people to turn their schools to such account as they please.

Now the key-note of this National Education law is liberty—liberty to the people of each school district to determine, not once for all, but from time to time, according to changing circumstances and ripening experience, and, presumably, advancing intelligence, what subjects shall be taught in the schools thereof. This liberty, which extends to religious as well as secular instruction, is necessarily, with a view to the practical exercise of it, delegated by those who possess it to a limited number in whom they have confidence. But the responsibility of the delegates is direct and immediate, and I think that I do not overestimate the intelligence of the people in any district of Scotland, be it Highland or Lowland, rural or burghal, when I say that, however illiterate many of them may be individually, they will find out somehow, and know for certain, whether the schools which they pay for and to which they send their children are good or bad; whether or not they are reasonably well conducted, and fairly serve their purpose. I am therefore disposed to conclude that the liberty which the law confers is likely, and even certain, to be used according to the circumstances and intelligence of each district for the time being; and these, I need hardly add, cannot be transcended by any legislation, however imperative or however skilful.

Up to a certain point, and that not a low one in a national education point of view, there is (religion apart) no controversy. All are agreed about the three Rs; and permit me to observe that a national and compulsory system of education under which every child in the country should set out in life with ability to read, write, and count, would be in advance of any that has yet been achieved and realised in this planet of ours. The controversy lies beyond anything that has ever yet been reached universally by any nation in the world.

Now of course I don't mean to suggest that none should, in the public schools, get anything beyond the three Rs until all had got these, but only that there might with advantage be somewhat more earnestness about the vast multitude who, although they may be able to read in a way, find too much difficulty in it to read with pleasure and profit; who, although they can write in a way, yet find it a painful task to write a letter; and whose arithmetic would not enable them to keep decently the books of a village shop or farm dairy. I am the very furthest in the world from being disposed to refuse attention to the claims of Greek and Latin and mathematics as subjects of instruction in our parish and village schools; but I cannot forget that these are the schools in which are educated our labourers, farm and domestic

servants, small tradesmen, and mechanics, all of whom I should wish to be able to read with pleasure and profit, to write with facility, and to count with such promptness and accuracy that, assuming intelligence, steadiness, and industry, they might have a reasonable prospect not only of happiness in a lowly sphere, but, opportunity favouring, of advancement in the world. When this point has been reached, not for a few, or even many, but for the mass of the people, I shall, for my part, be still more disposed than I am now to attend to the controversies about higher subjects which exist above it. I am not now speaking of all the schools under the statute—for these include a great variety up to the burgh schools of Edinburgh, Glasgow, and Aberdeen, and many others of a high class, and which have no share of local rates or parliamentary grants—but of the vast majority of those schools to which we look to provide the country in the not remote future with labourers, servants, tradesmen, and mechanics better instructed for their own happiness and prospects and the services which they may render to others, than the same classes have been under a more slender and parsimonious system of national education.

I have not, I trust, expressed myself so awkwardly, as to induce any one to suppose that I am inimical or other than friendly to the very highest *possible* education in our public schools. I really mean no more than this, which seems obvious enough, that as these schools exist for the people they ought to be made to serve their purpose. The lower and the higher education are on the common foundation of the three Rs, and this common foundation rises considerably higher than these. When the building has been raised so high, say to the height of the three Rs, the great bulk of the scholars in the common and most numerous schools drop off. The controversy about higher subjects only then begins. I do not say, or think, that the controversy is unimportant, even although I am persuaded that, with respect to the masses, the level at which it arises has never yet been reached. What I say is, that the question about raising the masses to that level has not, in my judgment, been sufficiently attended to. I see and appreciate the difficulties in the way of that result, and concede that the interests of the more intelligent scholars who have been carried so high, ought not in the meantime to be neglected; only qualifying the concession with the remark that I think these difficulties will yield to a more determined and vigorous effort, and that by making this effort with effect, more will be done to advance national education than by bestowing an equal amount of energy on what is called, and not improperly, the higher education, of which comparatively few can avail themselves. That portion of the great highway of education which is used by the multitude, and along which even those who are destined to journey furthest must pass, ought to be put and maintained in the best order. This is no fixed portion, but is capable of indefinite extension, and I am one of those who believe that it will be greatly extended, not rapidly perhaps, but steadily. The improvement and extension of this highroad of the masses is the chief business of the schools to which I now refer. The narrower and steeper paths beyond need not therefore be neglected even in these schools; but it is well, I think, to keep in view that these are the schools of the people, an infinitesimally small number of whom can possibly, as the world is now constituted, or is likely to be for a while yet, enter on these paths.

You will perceive from the tenor of these remarks that I incline to approve of the views which have influenced the present and former Governments to encourage, by their distribution of the sums annually placed at their disposal by Parliament, increased attention to those elementary subjects of instruction in which the great body of the people who use the national schools are chiefly interested. It is not my purpose to examine the details of the existing code, or to contrast that code with those that have preceded it. I therefore only notice that a fair account seems to me to be taken of special subjects beyond the conventional limits of the three Rs, and that, so far from condemning, I applaud the encouragement given to special subjects of a more popular and (for the schools immediately in question) useful character than mathematics and foreign languages. I venture to add, that in my judgment this is done in a manner which is beneficial and wise, inasmuch as the choice among the great variety of special subjects specified, and which include mathematics and foreign languages, both ancient and modern, is left to the parents and guardians of the pupils. I have much faith in the judgment of those who are immediately interested in the individual children, and especially in the judgment of the parents. There are exceptions, no doubt, numerous and painful enough, but generally and on the whole the parents, with such advice and assistance as are commonly available, can best determine what subjects of instruction their children are, in their circumstances and with their prospects, most likely to profit by. Up to a certain point there is, as I have observed, no room for question; and beyond that, the children themselves are likely to aid their parents and teachers in choosing their subjects; and if only a small number choose mathematics, Greek, and Latin, I must fairly own that I am neither surprised nor sorry.

I will not enter upon the controversy about the comparative value of the dead languages as educational agents, for of their absolute value to those who can be made to learn them there is, I suppose, no question. I should wish, however, with your permission, to make a very few observations on the really very important practical question, whether the time devoted to Latin in many of our public schools might not be more profitably employed. I know the delicacy of the question, and I shall trespass on it only so far as necessary for the few observations I have to make, which will not carry me far afield.

A synthetic language, inflective, with three genders, six cases, and a most logical grammar to govern its syntax, cannot fail to afford ample and vigorous mental exercise and disipline to those who study it—especially when the prosody, which to us moderns is mere matter of memory, is added to increase the perplexity. For the purpose of mental gymnastics a modern language—French, for example—which is analytic, and has only one case and two genders, may not be able to compete with it. But then, to learn the language is the necessary condition of reaping the intellectual fruits of the process; and it is pertinent to ask, what proportion of those whose time is spent upon it do in fact learn it? A precise answer cannot be given to the question, but it will, I suppose, be generally admitted that the proportion is very small—I mean, of course, of those who ever acquire a tolerable knowledge of the language, and of whom it can truly be said that, by the process of learning it, their minds have been better exercised and disciplined than they would have been by the study of easier and more

practical subjects. It is as true (perhaps even more so) of children and youths as it is of men, that they cannot learn anything without giving their attention to it, and that they will not give their attention to anything in which they do not for some reason or other take an interest. Now, as simple matter of fact, it is difficult to interest an average boy in Latin. It is naturally distasteful to the great majority, and the first condition of learning it is only fulfilled in exceptional instances, consisting in the parish schools, exclusively or nearly so, of those who, with their own goodwill and more or less prospective opportunity, are destined to some profession for which it is necessary. It is well indeed that for them, comparatively few though they be, the humblest schools of the country to which alone they may have access at the outset should continue, as heretofore, to supply the instruction which they want; and I trust that this will never cease to be the case. But for the great body of the pupils in these schools, and even in higher schools than these, I venture to say that what is to them a fixed quantity—viz., their school time—is greatly wasted by spending it on Latin.

With an affectionate boy the desire to please his parents or teacher —with a spirited boy emulation and a wish to excel, may excite an interest and induce attention with its results. It still remains a question whether you do the best for them by giving them Latin. The great law, that nothing is to be had without paying for it, is always operating. There is only so much time to be spent, and those who spend it on Latin must go without what they might otherwise have bought with it. With some exceptions of inconsiderable magnitude, the children in an elementary school must be taught in large classes. Numerous subdivisions and small classes are practically impossible, however unfortunate the impossibility may be. The question of the choice of subjects requires therefore, before it can be answered, an intelligent consideration of the position and circumstances and probable prospects of those whom the answer concerns. They are, each in his sphere and vocation, which you have to judge of and guess at as you best may, to carry on the business of life, that there may be seed to the sower and bread to the eater. Man does not live by bread only, but without bread he cannot live, and so we must have those among us who are to produce that necessary of life; and those who are in charge of elementary schools have to prepare multitudes of them to perform this their part in life. You who cultivate your intellects must be fed and clothed and lodged by those who cultivate the soil and make cloth and build houses, and there are many little domestic services which you need from those who are not necessarily or commonly distinguished by accomplishments beyond the sphere of their humble duties. Our system of national education comprehends, and in the schools to which I have throughout been chiefly alluding, mainly regards those who are, in the immediate future, to furnish this part of the world with those material necessaries and comforts without which we should be unable to exist, however spiritual and spiritually disposed we may be. It is not a little thing to help human beings to be more skilful and productive workers in the world; and to speak contemptuously of the parent who does not appreciate education "for its own sake," as the phrase is, but would have his child taught what will enable him to turn sixpence into a shilling—what, in short, will pay—is to manifest a misconcep-

tion of the constitution of the world. For my part I firmly and fervently believe that there is, generally speaking, sufficient mental exercise and discipline, and, for the vast majority of the human race, all that is practically possible, in the acquisition of useful information. And by useful information I mean what each man may turn to practical account in the business of *his* life. Great intellects, whatever may be their particular aptitudes—poetry, philosophy, science, statesmanship, or strategy—will develop themselves even though their earliest instruction should have been in a parish school and of the utilitarian order which I suggest, so that the regularity of the planetary system need not be deranged on account of these comets.

In conclusion, I desire to say that although I have only just alluded to the higher class public schools, I regard them as a most important feature of our system of national education as by law established. The humbler and more numerous schools about which I have been speaking are not only established but endowed. If I could I would have endowed the higher schools also, but that being impossible, I did what I could by including them in the national system as legal establishments. It looked and looks a small thing. If it had not, I might not have been able to persuade Parliament to sanction it. To support with rates or parliamentary grant classical schools for the education of the upper middle class was not in 1872, and probably is not now or likely soon to be, possible. The idea is not, however, a startling one to my mind, although I shall not now attempt to enforce or illustrate my view of the subject. What I wish to observe is, that there are in Scotland many large voluntary foundations of an educational character which it is generally, although perhaps not universally admitted, are greatly misspent in the sense of not being turned to the best account. These are likely to be the subject of not distant legislation ; and about, or shortly after, the time when the Act of 1872 was passed, I was myself instrumental in obtaining the appointment of a Royal Commission to take evidence and report on the matter. The Commissioners have given in their report, and I think it probable that when the most proper use to be made of the foundations to which I refer comes to be considered, the fact that our national system of education includes higher class schools which have no share of rates or grants, but depend entirely on voluntary foundations and fees, will assist and simplify the solution of the problem. The Scotch Education Act differs from that for England in many respects, and in this among others, that the Scotch is not confined to elementary education. I think, although I should not like to speak positively, that the word "elementary" does not occur in the Scotch Act. But, however this may be, it is certain that the provisions of the Act comprehend and apply to schools of the highest class. These higher schools I should much like to see magnified and multiplied, and if any of you should think that I have spoken disrespectfully or lightly of the higher teaching—of mathematics and classics—I beg to say that my remarks had special reference to the schools to which I was immediately referring, and that in the higher class of schools which I now allude to, and which are also national and popular schools, I am as much disposed to be zealous for these branches of education, and to carry them high, as those whose zeal for them, in my judgment—which, however, I desire to express with modesty but at

the same time with conviction—is not seldom manifested in wrong places. In the higher schools you are likely generally to find a sufficient number of pupils in whom the requisite interest may be awakened —who will therefore give more or less attention, and make advancement accordingly, and that without any extravagant or undue sacrifice of time which to them might be more profitably employed.

I have expressed myself unfortunately if what I have said has induced any one to suppose that I am adverse to a high standard of instruction in the common public schools. I desire as high a standard as may be compatible with the chief end of their existence, as I regard it; and it is with profound satisfaction that I observe, from the reports and statistics which have been published by the Education Department and the Board of Education, that this standard as it existed before the Act of 1872 has not been lowered, but, on the contrary, has been notably raised, as I had ventured to think it would be, under the influence of the more powerful educational machinery which the Act put in motion. It would, indeed, be strange if a much larger number of schools, taught by a far greater number of more carefully trained and selected and better paid teachers, and conducted under the immediate superintendence of those who are interested in their efficiency and success, did not achieve better results than had been experienced under the more limited system which has been superseded. It is, therefore, no matter of surprise that there has been an advance, and that in all directions. It has, indeed, been said that the superior instruction in the elements which has been secured to a greatly increased number of pupils has been purchased by some sacrifice of the higher instruction which used to be imparted to some. But there is, as the returns show, and as I certainly believe, no foundation whatever for the statement. The reverse is the truth, as it is reasonable to expect it should be. The advance upon ignorance has been in all directions. I venture to expect that it will continue to be so, and with this result, that in the future as in the past the more efficient teaching of the elements to an ever increasing number of pupils will be accompanied by a corresponding advance and elevation of the standards which may in these humbler schools be attained by those of exceptional ability or energy, and that such ability and energy will be more largely developed as the elementary teaching is improved and extended.

RULES, DIRECTIONS, ORDERS, &c.

OF THE

SCOTCH EDUCATION DEPARTMENT

XI.

RULES, DIRECTIONS, ORDERS, ETC., OF THE SCOTCH EDUCATION DEPARTMENT.

(*a.*) Constitution of Department.

The Lord President of the Council, the Right Honourable the Earl of Beaconsfield, the Vice-President of the Committee of Council on Education, Lord Gordon, the Chancellor of the Exchequer, the Secretary of State for the Home Department, and the Right Honourable William Watson.

Secretary.—Sir F. R. Sandford, C.B.; *Assistant Secretary.*—A. T. Cory, Esq.; *Senior Examiner.*—H. Craik, Esq.; *Junior Examiners.*—W. Severn, A. Rankine, T. S. Robertson, G. Todd, Esqs.; *Counsel.*—J. Badenach Nicolson, Esq.

(*b.*) INSPECTORS' DISTRICTS.

Scotland.

N.B.—Where more than one inspector is employed in the same district, the name of the Chief Inspector is printed first. The names of the inspectors' assistants are printed in italics.

Number of District.	County or District.	Population (1871).	H.M. Inspectors and Inspectors' Assistants.	Headquarters.
			SOUTHERN DIVISION.	
			(Dr Wilson, Senior Inspector.)	
1[1]	Edinburgh .	328,379	Dr Wilson . .	19 Palmerston Place, Edinburgh, N.B.
	Haddington .	37,771	G. Dunn, Esq. .	
	Linlithgow .	40,965	W. W. Waddell, Esq.	9 Grange Road, Edinburgh, N.B.
		407,115	J. Blaikie, Esq.†	14 Viewforth Place, Edinburgh. N.B.—(†*Temporary during Mr Marshall's absence from district.*)
			Mr R. Small .	3 Bernard Terrace, Newington, Edinburgh, N.B.
2	Peebles .	12,330	A. E. Scougal, Esq.	Eildon Grove, Melrose, N.B.
	Selkirk . .	14,005	*Mr W. Pennycook*	Market Place, Melrose, N.B.
	Roxburgh .	53,974		
	Berwick .	36,486		
		116,795		

[1] The chief inspector of this district is also Inspector of Training Colleges.

Number of District.	County or District.	Population (1871).	H.M. Inspectors and Inspectors' Assistants.	Headquarters.
	Southern Division—*continued.*			
3	Dumfries	74,808	A. O. Barrie, Esq.	6 Victoria Terrace, Dumfries, N.B.
	Kircudbright	41,859	W. Bathgate, Esq.	Dundonald Road, Kilmarnock, N.B.
	Wigtown	38,830	(*See also* No. 8.)	
			Mr J. Galloway	3 St Mary's Place, Dumfries, N.B.
		155,497		
4	Fife	160,735	Hugh Wilson, Esq.	Townsend Place, Kirkcaldy, N.B.
	Kinross	7,198	*Mr T. Smith*	1 Glasswork Street, Kirkcaldy, N.B.
		167,933	*Mr J. Craigie*	5 St Mary's Place, Aberdeen, N.B.
			(*See also* No. 14.)	
5	Perth	127,768	A. Walker, Esq.	Viewbank, Craigie, Perth, N.B.
			Mr J. W. Munro	13 Queen Street, Perth, N.B.
	Western Division.			
	(Dr Kerr, Senior Inspector.)			
6	Lanarkshire—			
	Lower Ward	574,395	Dr Kerr	
	With parishes of—		A. R. Andrew, Esq.	Old Hall House, Bothwell, Lanarkshire, N.B.
	Blantyre		R. Calder, Esq.	290 Renfrew Street, Glasgow, N.B.
	Bothwell		*Mr W. S. Gall*	Garvald Place, Uddingston, Lanarkshire, N.B.
	Cambuslang			
	East Kilbride	47,168	*Mr W. Calder*	290 Renfrew Street, Glasgow, N.B.
	Hamilton (Burgh and Landward).		*Mr J. Miller*	48 Union Street, Hamilton, N.B.
	In Middle Ward.			
		621,563		
7	Lanarkshire—		J. Smith, Esq.	Glenelg Cottage, Uddingston, N.B.
	Middle Ward (the remainder)	112,789		
	Upper Ward	43,586	*Mr W. M. Shanks*	11 Buccleuch Street, Glasgow, N.B.
		156,375		
8	Ayr	200,809	J. W. Marshall, Esq.	Ayr, N.B.
			W. Bathgate, Esq. (*See also* No. 3.)	Dundonald Road, Kilmarnock, N.B.
			Mr J. Henderson	Hawkhill, Ayr, N.B.
9	Stirling	98,218	R. Ogilvie, Esq.	8 Park Terrace, Stirling, N.B.
	Dumbarton	58,857	*Mr W. Whyte*	51 Wallace Street, Stirling, N.B.
	Clackmannan	23,747		
		180,822		

Number of District.	County or District.	Population (1871).	H.M. Inspectors and Inspectors' Assistants.	Headquarters.
			Western Division—*continued.*	
10	Renfrew .	216,947	D. Ross, Esq. .	Ardindrean House, Windsor Circus, Glasgow, N.B.
	Bute . .	16,977	J. Boyd, Esq. .	9 Princes Square, Regent Park, Glasgow, N.B.
	Argyll (Islay, Jura, and Mull) . .	75,679	*Mr J. Binnie* . *Mr D. Johnston*	Kilmalcolm, Greenock, N.B. 119 New City Road, Glasgow, N.B.
		309,603		
			Northern Division.	
			(Mr Hall, Senior Inspector.)	
11	South Forfar[1]	166,952	A. Dey, Esq. .	10 St James's Place, Broughty Ferry, Dundee, N.B.
			Mr D. Thompson	3 Louise Terrace, West Ferry, Dundee, N.B.
12	North Forfar[2]	72,862	R. J. Muir, Esq. .	Little Mill, Montrose, N.B.
	Kincardine .	34,630	*Mr S. D. Black*	Melville Terrace, Montrose, N.B.
	Shetland .	31,608		
		139,100		

[1] South Forfar consists of the burghs of—

Dundee and Forfar.

And the following school districts:—

Arbilot.	Dunnichen.	Kirkden.	Murroes.
Auchterhouse.	Eassie and Nevay.	Liff, Benvie, and Invergowrie.	Newtyle.
Barry.	Forfar (landward).	Lundie.	Panbride.
Broughty-Ferry (town).	Friockheim.	Mains and Strathmartine.	Tealing.
Carmylie.	Glammis.	Monifieth.	
Coupar-Angus.	Inverarity.	Monikie.	
Dundee (landward).	Kettins.		
	Kinnettles.		

[2] North Forfar consists of the burghs of—

Arbroath, Brechin, and Montrose,

And the following school districts:—

Aberlemno.	Dun.	Kirriemuir (including town).	Montrose (landward)
Airlie.	Edzell.	Lethnott and Navar.	Oathlaw.
Arbroath (landward united to St Vigeans).	Farnell.	Lintrathen.	Rescobie.
	Fearn.	Lochlee.	Ruthven.
Brechin (landward).	Glenisla.	Logie Pert.	St Vigeans (including Arbroath landward).
Careston.	Guthrie.	Lunan.	
Cortachy and Clova.	Inverkeillor.	Marytown.	Stracathro.
Craig.	Kingoldrum.	Menmuir.	Tannadice.
	Kinnell.		

Division of District.	County or District.	Population (1871).	H.M. Inspectors and Inspectors' Assistants.	Headquarters.
			Northern Division—*continued.*	
13	Banff . .	60,028	T. A. Stewart, Esq.	Keith, N.B.
	except Fetter Angus and St Fergus.		*Mr W. Campbell*	Keith, N.B.
	Orkney . .	31,274		
	Aberdeen—			
	Cairney .			
	Drumblade.			
	Forgue .	11,544		
	Glass . .			
	Huntly and Ythan Wells			
		102,846		
14	Aberdeen—		J. Hall, Esq. .	243A Union Street, Aberdeen, N.B.
	(the remainder) . .	233,059	R. Harvey, Esq. .	11 Devanha Terrace, Aberdeen, N.B.
			Mr H. Welsh .	23 Osborne Place, Aberdeen, N.B.
	Banff— Fetter Angus and St Fergus .	1,995	*Mr J. Craigie* . (*See also* No. 4.)	5 St Mary's Place, Aberdeen, N.B.
		235,054		
15	Nairn . .	10,225	W. Jolly, Esq. .	Island Bank, Inverness, N.B.
	Inverness			
	Mainland .	53,125		
	Western Isles			
	(part of) .	3,100		
	Harris . .	1,112		
	North Uist .	4,107		
	South Uist .	5,749		
		77,418		
16	Elgin . .	43,612	J. Macleod, Esq. .	Elgin, N.B.
	Skye . .	17,330		
	South Ross[1].	26,232		
		87,174		

[1] South Ross consists of the following school districts :—

Applecross.	Gairloch.	Lochalsh.	Urquhart and Logie Wester.
Avoch.	Glenshiel.	Lochcarron.	Urray.
Carnoch.	Killearnan.	Resolis.	
Contin.	Kinlochleuchart.	Rosemarkie (*including burgh of Fortrose*).	
Cromarty (*with burgh*).	Kintail.		
	Knockbain.		

Number of District.	County or District.	Population (1871).	H.M. Inspectors and Inspectors' Assistants.	Headquarters.
		Northern Division—*continued.*		
17	North Ross[1].	28,776	D. Sime, Esq. .	Bonar Bridge, Ross-shire, N.B.
	Caithness .	39,992		
	Sutherland .	24,317		
	Lewis . .	25,947		
		119,032		

H.M. INSPECTORS OF SCHOOLS.

Inspectors.	Number of District.	Inspectors.	Number of District.
[2]Andrew, A. R., Esq. . .	6	Macleod, J., Esq. . .	16
		[2]Marshall, J. W., Esq. .	1
Barrie, A. O., Esq. . .	3	Muir, R. J., Esq. . .	12
[2]Bathgate, W., Esq. . .	3 and 8		
[2]Blaikie, J., Esq. . . .	1	Ogilvie, R., Esq. . . .	9
[2]Boyd, J., Esq. . . .	10		
		Ross, D., Esq. . . .	10
[2]Calder, R., Esq. . . .	6		
		Scougal, A. E., Esq. . .	2
Dey, A., Esq. . . .	11	Sime, D., Esq. . . .	17
Dunn, G., Esq. . . .	1	Smith, J., Esq. . . .	7
		Stewart, T. A., Esq. . .	13
Hall, J., Esq. . . .	16		
[2]Harvey, R., Esq. . .	14	[2]Waddell, W. W., Esq. .	1
		Walker, A., Esq. . .	5
Jolly, W., Esq. . . .	15	[3]Wilson, Dr	1
		Wilson, Hugh, Esq. . .	4
[3]Kerr, Dr	6		

INSPECTORS' ASSISTANTS.

Assistants.	Number of District.	Assistants.	Number of District.
Binnie, J.	10	Miller, J.	6
Black, S. D. . . .	12	Munro, J. W. . . .	5
Calder, W.	6	Pennycook, W. . . .	2
Campbell, W. . . .	13		
Craigie, J.	4 and 14	Shanks, W. M. . . .	7
		Small, R.	1
Gall, W. S.	6	Smith, T.	4
Galloway, J. . . .	3		
		Thompson, D. . . .	11
Henderson, J. . . .	8		
		Welsh, H.	14
Johnston, D. . . .	10	Whyte, W.	9

[1] North Ross consists of the following school districts:—

Alness.	Fearn.	Kincardine.	Rosskeen.
Dingwall (*with burgh*).	Fodderty.	Lochbroom.	Tain (*with burgh*).
Edderton.	Kilmuir Easter.	Logie Easter.	Tarbat.
	Kiltearn.	Nigg.	

[2] Inspectors not in charge of districts. [3] Senior inspectors.

c. CODE (1878)

OF THE SCOTCH EDUCATION DEPARTMENT.

PRELIMINARY CHAPTER.

1. A sum of money is annually granted by Parliament "for public "Education in Scotland."

2. This grant is administered by the Scotch Education Department,[1] herein-after called the Department.

3. The object of the grant is to aid local exertion, under certain conditions, to maintain—

(*a.*) Schools for children (Article 6); and

(*b.*) Training colleges for teachers (Article 83).

4. Aid to maintain schools is given by annual grants conditional upon the attendance and proficiency of the scholars, the qualifications of the teachers, and the state of the schools.

5. These grants are made,—

a. "To any school board for and in respect of the public schools under their management."

b. "To the managers of any school which is, in the opinion of the Department, efficiently contributing to the secular education of the parish or burgh in which it is situated." (Education Act (Scotland), 1872, Sect. 67 (2.).)

6. In every school, or department of a school, in respect of which grants are made, the following regulations must be strictly observed :—

a. "The school shall be open to children of all denominations, and any child may be withdrawn by his parents from any instruction in religious subjects and from any religious observance in any such school; and no child shall in any such school be placed at any disadvantage with respect to the secular instruction given therein by reason of the denomination to which such child or his parents belong, or by reason of his being withdrawn from any instruction in religious subjects."

b. "The time or times during which any religious observance is practised or instruction in religious subjects is given at any meeting of the school for elementary instruction shall be either at the beginning or at the end, or at the beginning and at the end, of such meeting, and shall be specified in a table approved of by the Scotch Education Department." (Education Act, Sect. 68.) This time table is to be submitted to the inspector for approval, on behalf of the Department, at the time of his annual visit (Article 11).

[1] "The term 'Scotch Education Department' shall mean the Lords of any "Committee of the Privy Council appointed by Her Majesty on Education in "Scotland" (Education (Scotland) Act, 1872, s. 1).

c. The education given must consist chiefly of elementary instruction (Article 28).

d. The ordinary payments in respect of the instruction from each child must not exceed ninepence a week.

7. No grant is made for or in respect of—

a. Instruction in religious subjects (Education Act, Sect. 67 (*a.*)).

b. A school established after the passing of the Education (Scotland) Act (*6th August* 1872), unless the Department shall after due inquiry be satisfied that no sufficient provision exists for the children for whom the school is intended, regard being had to the religious belief of their parents, or that it is otherwise specially required in the locality where it is situated (*ibid.*, Sect. 67 (*b.*)).

c. Higher class public schools (*ibid.*, Sect. 62-64).

8. Officers are employed to verify the fulfilment of the conditions on which grants are made, to collect information, and to report the results to the Department.

9. These officers are inspectors appointed by Her Majesty, on the recommendation of the Department, and persons employed by the Department, as occasion requires, in the capacity of acting inspectors, inspector's assistants, or auditors of accounts.

10. No grant is paid except on a report from an inspector, showing that the conditions of the grant have been fulfilled, unless some unforeseen cause (such as a continued epidemic) makes it impossible for the inspector to visit and report upon the school.

10*a.* The inspector may delegate to an assistant the duty of examining into the attendance and proficiency of the scholars.

11. The Department, at the time of agreeing to place a school on the list of those to which grants may be made, informs the managers in what month to look for the inspector's annual visit. This month remains the same from year to year, unless the Department informs the managers of a change. Notice of the day of the inspector's annual visit is given beforehand to the managers.

12. An inspector may visit any public school, or other school subject to inspection, at any other time without notice.

13. Grants are issued to each school only once per annum. The year for this purpose is reckoned as ending with the last day (inclusive) of the month preceding that fixed for the inspector's annual visit.

Exceptions:—

An instalment of the grant conditionally due may be paid,—

(*a.*) When the inspector's visit is postponed, owing to a change in the month of inspection (Article 11), for three months or upwards.

(*b.*) When from an epidemic, or other unavoidable cause, the inspection cannot be held within three months after the date at which the grant is due.

14. No school is placed on the list for inspection (Article 11) till an application has been addressed to the Secretary, Scotch Education Department, Whitehall, London, S.W.

Full instructions are thereupon issued according to the particulars of the case.

15. *a.* The managers of a school must appoint a correspondent with the Department, and must give notice of any change of correspondent.

b. Teachers cannot act as managers of, or correspondents for, the schools in which they are employed, nor can they be recognised by the Department as clerks, or treasurers, of school boards, unless very special grounds can be shown for their holding such appointments.

c. The managers includes,—

(1.) The school board of any burgh or parish.

(2.) The managers of a public school appointed by a school board under section 22 of the Education Act.

(3.) The managers of any school to which grants are made pursuant to Article 5 *b*.

Building Grants.

16. It is provided by Section 67 of the "Education (Scotland) Act, "1872," that—

"No parliamentary grant shall be made in aid of building, enlarging, improving, or fitting up any school, except in pursuance of a written application from a school board, containing the information required by the Scotch Education Department for enabling them to decide thereon, and sent to the said Department on or before the 31st day of December 1873, but without prejudice to applications made prior to the passing of this Act (*6th August* 1872), being dealt with according to the existing laws; and with respect to any *parish* situated in the counties of Inverness, Argyll, Ross, and Orkney and Shetland, where a school rate of not less than ninepence in the pound on the rateable value of such parish has been levied, such grant as aforesaid may be made of an amount not exceeding 300*l.* for each school and 100*l.* for each teacher's residence, without regard to the amount contributed by the school board out of the school fund or otherwise, or by local subscription, towards the building, enlarging, improving, or fitting up such school or residence."

(1.) Subject to these conditions, aid will be granted to school boards to build public schools (Article 6) if the Department is satisfied—

a. That such a school is required in the locality.

b. That the buildings, at the time of application, have not been begun nor contracted for, and that no trust deed has been executed.

(2.) The grants made by the Department for building, enlarging, improving, or fitting up schools, shall not exceed *any one* of the following limits, viz.:—

1*st Limit.*—The total amount contributed in the form of—

a. Payments by the school board;

b. Local subscriptions, or collections;

c. Materials, at the price allowed for them by the contractor, or at which sold off;

d. Sites given without valuable consideration (the value to be certified by two professional surveyors);

e. Cartage (the value to be certified by the surveyor of roads for the district).

2*d Limit.*—2*s.* 6*d.* per square foot of internal area in new school-rooms and class-rooms.

3*d Limit.*—65*l.* for each teacher's house.

(3.) If the school board of any *parish* in the counties of Inverness,

Argyll, Ross, and Orkney and Shetland, where a school rate of not less than ninepence in the pound on the rateable value of such parish has been levied, propose to erect a new school which shall cost more than 300*l.*, or a teacher's residence which shall cost more than 100*l.*, then, and in each such case, in addition to the sums specified in the first paragraph of this Article, a grant may be made of an amount not exceeding one half of the cost of such buildings in excess of these sums.

(4.) The site, plans, estimates, specifications, title, and trust deed must, in every case, be previously approved by the Department.

(5.) Grants are not made for rooms under places of worship; nor for improving or fitting up schools which have already received the maximum grant allowable under the Articles of the Code in force at the time when such previous grant was made.

(6.) The extension of the area of existing school-rooms to receive more scholars, and the erection or improvement of teachers' houses, are treated *pro tanto* as new cases under Article 16 (2.)

(7.) No application can be entertained if the approved estimate falls below 20*l.* in small rural schools, or 50*l.* in other schools.

The Site.

(8.) The site must be—

a. In extent,

Not less than 1200 square yards.

b. In situation,

1. Healthy, and not noisy.

2. Within convenient distance from the homes of the scholars.

c. In tenure,

Fee simple (Acts 4 & 5 Vict. c. 38., and 12 & 13 Vict. c. 49.)

(1.) Without incumbrance, or rights reserved over the surface.

(2.) Any power granted or reserved to lease or sell the site, or to terminate the lease and resume possession, shall be so conceived and expressed that it shall not be lawful to exercise the same without the written consent of the Secretary of State for the Home Department, and the possession of the site shall not be resumed without first repaying any grant which may have been paid in respect of the premises.

(3.) Leaseholds are not admissible, if fee simple can be granted. The term must not be less than 99 years, and there must be no onerous covenants, nor more than nominal rent.

The Trust Deed.

(9.) The trust deed must declare the premises to be granted to a school board in trust for a public school.

(10.) When the trust deed has been executed according to a draft approved and sealed by the Department, and (when necessary) enrolled or registered, a copy of it, including all signatures, attestations, and endorsements, must be made on plain unstamped parchment, and lodged in the Office of the Department.

The Plans.

(11.) The plans (with specification and estimate), when approved and sealed, are returned to the school board, but must be lodged in the Office of the Department before a grant is paid.

Payment of Grants for Building, Enlarging, Improving, or Fitting up Public Schools.

(12.) The amount of the grant is not announced until after the draft trust deed and plans have been sealed.

(13.) The grant must be accepted or declined within 14 days.

(14.) The grant is paid on presentation of a certificate (with balance sheet annexed) by the school board, setting forth that the building and conveyance are completed, and that the money in hand will, when added to the grant, meet all claims and close the account.

(15.) Grants under 50*l.* are treated as lapsed, if unpaid at the end of nine months, and grants above 50*l.* at the end of eighteen months, from the date of announcing them. If the grant exceeds 100*l.*, the date of claiming payment may be deferred, if satisfactory reasons are previously shown to the Department for delay in presenting the certificate (Sect. 14).

CHAPTER II.—ANNUAL GRANTS.

PART I.—SCHOOLS FOR CHILDREN.

SECTION I.—PRELIMINARY CONDITIONS.

17. Before any grant is made to a school (Article 4) the Department must be satisfied that—

(*a.*) The school is conducted in accordance with the terms of Article 6; and no child is refused admission on other than reasonable grounds.

(*b.*) The school is not carried on with a view to private emolument (Article 5 *b.*)

(*c.*) The premises are healthy, well lighted, cleaned, warmed, drained, and ventilated, properly furnished, supplied with suitable offices, and contain in the principal school-room and class-rooms at least 80 cubical feet of internal space, and 8 square feet of area, for each child in average attendance.[1]

(*d.*) The principal teacher is certificated (Article 43), and is not allowed to undertake duties, not connected with the school, which occupy any part whatever of the school hours, or of the time appointed for the special instruction of pupil-teachers (Schedule II. 5).

Exception:—

The teachers of evening schools need not be certificated if they are,—

(1.) Pupil-teachers who satisfy the conditions of Article 60; or,

(2.) Upwards of 18 years of age (Article 42), and approved by the inspector.

(*e.*) Notice is immediately given to the Department of any changes in the school staff (Article 39) which occur in the course of

[1] In schools erected with the aid of a building grant, the average attendance may not exceed the number of children for whom the plans were approved by the Department.

the year. The *first* grant to a school is computed from the date at which (1) the appointment of a certificated teacher is notified to, and approved by, the Department; *or* (2) the acting teacher passes the examination for a certificate (Article 44).

(*f.*) The girls are taught plain needle work[1] and cutting out as part of the ordinary course of instruction.

(*g.*) All returns called for by the Department, or by Parliament, are duly made; the admission and daily attendance of the scholars carefully registered by, or under the supervision of, the teacher (Article 67); accounts of income and expenditure accurately kept by the managers, and duly audited; and all statistical returns and certificates of character (Articles 67, 77, and 80) may be accepted as trustworthy.

(*h.*) Three persons have designated one of their number to sign the receipt for the grant.

Exception:—

The treasurer of a school board signs the receipt for grants to schools under the management of the board.

(*i.*) The income of the school is applied only for the purpose of public or State-aided schools.[2]

18. The grant may be withheld, if, on the inspector's report, there appears to be any serious *primâ facie* objection. A second inspection, by another inspector, is made in every such instance, and if the grant be finally withheld, a special minute of the case is made and recorded.

Grants to Day Schools.

19. The managers of a school which has met not less than 400[3] times, in the morning and afternoon, in the course of a year, as defined by Article 13, may claim at the end of such year—

[1] This includes darning, mending, marking, and knitting; but no fancy work of any kind may be done in school hours. *See* Schedule III., which contains a scheme of instruction in needlework, recommended for adoption in aided schools.

[2] *See* Elementary Education Act, 1876, Sections 20 and 53. This may include part of the salary of an organising teacher, or of a teacher of Gaelic, drill, cooking, or any other special subject employed by the managers of several schools; but not expenditure on Sunday schools or on such items as school treats, clothing, money prizes, or any outlay on the premises beyond the cost of ordinary repairs, or for other purposes not recognised by the Department as educational. Any income from endowment, if spent according to the terms of the trust, is not affected by this rule.

[3] *Exceptions:—*

i. If a school is employed for the purpose of taking the poll at a *Parliamentary election*, under section 6 of the Ballot Act, 1872, the number of meetings during which the managers are deprived of the use of the school, *solely* in consequence of its being so employed, may, *if necessary*, be counted in making up—

1. The 400 meetings of the school; or,
2. The 250 attendances of any scholar who was under instruction in the school the week before it was occupied for election purposes.

ii. If a school claiming annual grants for the first time has not been open for the whole year (Article 13); *or*, if a school has been closed during the year, under medical authority, on account of a local epidemic, or for any unavoidable cause, a proportionate reduction is made for the number of meetings (400) and attendances (250) required by this Article.

A. The following sums per scholar, according to the average number in attendance throughout the year (Article 26).

(1.) 4*s.*

(2.) 1*s.* if singing forms a part of the ordinary course of instruction.

(3.) 1*s.* 6*d.* if the inspector reports that the organisation and discipline are *excellent; or*, 1*s.* if he reports that they are *good.*

The inspector will bear in mind, in reporting on the organization and discipline, the results of any visits without notice (Article 12) made in the course of the school year; and will not interfere with any method of organization adopted in a training college under inspection if it is satisfactorily carried out in the school. To meet the requirements respecting discipline, the managers and teachers will be expected to satisfy the inspector that all reasonable care is taken, in the ordinary management of the school, to bring up the children in habits of punctuality, of good manners and language, of cleanliness and neatness, and also to impress upon the children the importance of cheerful obedience to duty, of consideration and respect for others, and of honour and truthfulness in word and act.

B. For every scholar present on the day of examination (Article 11), who has attended (Article 23) not less than 250[1] morning or afternoon meetings of the school:—

1. If above four, and under seven, years of age at the end of the year (Article 13),—
   (*a.*) 8*s.* if the infants are taught as *a class* of a school suitably to their age, and so as not to interfere with the instruction of the older children; *or*,
   (*b.*) 10*s.* if the infants are taught as a separate department, by a certificated teacher of their own, in a room properly constructed and furnished for their instruction.
2. If more than seven years of age, subject to examination (Articles 28, 29)—
   (*a.*) 3*s.* for each pass in reading, writing, arithmetic; *or*,
   (*b.*) 4*s.* for each such pass in an infant school[2] or department (Article 19 B. 1. *b.*)
3. No grant will be paid for any scholar who passes in only *one* of these three subjects (Article 29 *b.*)

[1] *Exceptions*:—

i. If a school is employed for the purpose of taking the poll at a *Parliamentary election*, under section 6 of the Ballot Act, 1872, the number of meetings during which the managers are deprived of the use of the school, *solely* in consequence of its being so employed, may, *if necessary*, be counted in making up—

1. The 400 meetings of the school; or,
2. The 250 attendances of any scholar who was under instruction in the school the week before it was occupied for election purposes.

ii. If a school claiming annual grants for the first time has not been open for the whole year (Article 13); *or*, if a school has been closed during the year, under medical authority, on account of a local epidemic, or for any unavoidable cause, a proportionate reduction is made for the number of meetings (400) and attendances (250) required by this Article.

[2] *See* Supplementary Rules 8 and 9 (Fifth Schedule).

4. The results of the examination of each scholar will be communicated to the managers.
5. No scholar who has made the prescribed number of attendances may (without a reasonable excuse for absence on the day of the inspector's visit) be withheld from examination.

C. The following sums per scholar, according to the average number of children, above 7 years of age, in attendance throughout the year (Article 26),—

1. 2*s.* if the scholars present on the day of examination, *in the classes* from which children are examined in Standards II. and III., show an intelligent and grammatical knowledge of the passages read.
2. 2*s.* if *the classes* from which children are examined in Standards IV.-VI., or in specific subjects (Article 21 *b*), pass creditably in history and geography. *This grant will not be paid unless* 10[1] *per cent of the scholars examined under Article* 19 *B.* 2 (*a.*) *are presented in Standard IV. and upwards.*
3. The extent of the examination is indicated by the passages printed in italics in Article 28. In districts where Gaelic is spoken, the intelligence of the children examined under any paragraph of this Article (19) may be tested by requiring them to explain in Gaelic[2] the meaning of the passages read.
4. No scholar who has made the prescribed number of attendances, or has, at the date of inspection, been for six months on the register, may (without reasonable excuse for absence on the day of the inspector's yearly visit) be withheld from examination under this paragraph (C.); and one half of the children so examined must pass creditably.
5. The mode of examination (whether oral or on paper)[3] is left to the discretion of the inspector.

D. A special grant[4] of 10*l.* (or 15*l.*), subject to a favourable report from the inspector, if the population within two miles, by the nearest road, of the school is less than 300 (or 200) souls, and there is no other public or State-aided school recognised by the Department as available for that population.

N.B.—This special grant is not taken into account in making a reduction under Article 32 (*a.*)

(*a.*)[5] In thinly peopled districts where the number of scholars that can be brought together at one centre is less than 15, children living more than four miles from any aided school, or separated from it by the sea, may be instructed at their own homes, or elsewhere, by a

[1] This proportion will be raised in 1879 (1 April) to 15, in 1880 to 20, and in 1881 to 25, per cent.

[2] Gaelic may be taught during the ordinary school hours, either by the certificated teacher, or by any person specially employed for the purpose.

[3] Examination on paper will, as a rule, be confined to scholars in Standard VI.

[4] *See* Elementary Education Act, 1876, sections 19 (2 and 3) and 53.

[5] See Circular, No. 31, p. 440.

teacher approved by the inspector, and working under the supervision of the certificated teacher of a school to which grants are made. If these scholars, having been so instructed on 60 days in the year, are presented to the inspector on the day of his annual visit to the central school, the managers of such school may claim a double grant on their account under Article 19, B. 2.

(*b.*)[1] When the number of scholars so instructed by one such teacher, and presented to the inspector, reaches 15, the managers may claim a grant of 10*l.* in addition to the amount earned by examination.

E. The sum of 40*s.* (or 60*s.*) in respect of each pupil-teacher[2] required by Article 32 (*c.*), who satisfies fairly (or well) the conditions of Article 70 (*e.*)

20. 150 attendances (Article 23) qualify for examination—

(*a.*) Scholars under any half-time Act.

(*b.*) Scholars above 10 certified by the managers to be beneficially employed at work when not at school.

(*c.*) Scholars residing two miles or upwards from the school.

21. If the time table of the school has provided for the continuous teaching throughout the year of one or more specific subjects of secular instruction according to the table in Schedule IV.—

a. A grant of 4*s.* per subject may be made for every day scholar, presented in Standards IV.-VI. (Article 28) who passes a satisfactory examination in not more than *two* of such subjects.

b. Any scholar who has previously passed in Standard VI. may be presented for examination in any *three* of such specific subjects.

c. No payment will be made under this Article if less than 75 per cent of the passes attainable in the Standard Examination by the scholars presented for examination (Article 28) has been obtained.

d. No grant may be claimed under this Article on account of any scholar who has been examined, in the same subject, within the preceding year, by the Department of Science and Art.[3]

e. A scholar may not be examined a second time in the same stage of a specific subject; nor, after being examined in the first stage of a subject, may the scholar change that subject for another.

f. Every girl presented under this article must take domestic economy (Schedule IV., column 14) as a subject of examination.

[1] See Circular No. 31, p. 440.

[2] This grant should be divided between the teacher and pupil-teachers in such proportion as the managers may determine.

[3] *See* 'Science Directory,' *Section LI.* "No pupil in an elementary school "receiving aid from the Education Department, Whitehall, may be presented "for examination by the Science and Art Department in any subject of science "who has not passed Standard VI. of the Scotch Code: nor who has been "examined within the preceding six months in the same subject by Her Majesty's "Inspectors."

Grants to Evening Schools (Articles 106-112).

22. The managers of a school which has met not less than 45 times in the evening, in the course of a year, as defined by Article 107, may claim (Articles 108 and 109)—

(*a.*) The sum of 4*s.* per scholar, according to the average number in attendance throughout the year (Article 26).

(*b.*) For every scholar who has, in the year, been under instruction in secular subjects for not less than 40 hours during evening meetings of the school 7*s.* 6*d.*, subject to examination (Article 28), viz., 2*s.* 6*d.* for passing in reading, 2*s.* 6*d.* for passing in writing, and 2*s.* 6*d.* for passing in arithmetic.

Calculation of Attendance.

23. Attendance at a morning or afternoon meeting may not be reckoned for any scholar who has been under instruction in secular subjects less than two hours,[1] if above, or one hour and a half[2] if under, seven years of age; nor attendance at an evening meeting for any scholar who has been under similar instruction less than one hour.

(*a.*) Between the 1st of November and 1st of March, two attendances may be registered for any scholar who has been under secular instruction for four hours, in the morning and afternoon taken together of any day on which the school is open for five hours.

24. Attendance of boys at military drill, under a competent instructor, or of girls at lessons in practical cookery, approved by the inspector, may, in a day school, be counted as school attendance for not more than 40 hours in the year, and (*in the case of drill*) two hours a week.

25. Attendances may not be reckoned for any scholar in a day school under 3 or above 18, or, in an evening school, under 12 or above 21, years of age.

26. The average number in attendance for any period is found by adding together the attendances of all the scholars for that same period, and dividing the sum by the number of times the school has met within the same period; the quotient is the average number in attendance.

27. In calculating the average number in attendance, the attendances of half-time scholars reckon for no more than those of other scholars.

[1] This may include an interval of 15 minutes for recreation during a meeting of 3 hours, or of 5 to 10 minutes in a shorter meeting.

[2] Not including any time allowed for recreation.

Standards of Examination.

28.	Standard I.	Standard II.	Standard III.	Standard IV.	Standard V.	Standard VI.
Reading.*	Easy Book, not confined to words of one syllable.	Reading, *with comprehension*, easy narrative. *The scholar to point out the nouns in the passage read.*	Improved reading of plain narrative. *The scholar to show comprehension of the meaning of the sentences read, and to point out the nouns, adjectives, and verbs.*	Reading intelligently a passage from some history book in use in the school, with parts of speech and explanation of the passage read.	Reading with expression a short passage of prose or of poetry, with explanation, grammar and elementary analysis of simple sentences.	Reading, with improved expression, explanation, grammatical analysis, of passages selected by the Inspector.
Writing.	A line from the same book, copied in large or half text, on slates or in copy-books, at option of managers.	(*a*) A short sentence, of not more than three lines, from the same book, dictated slowly, word by word. (*b*) Writing large or half-text; copy-books to be submitted.	(*a*) Five lines from the same book, dictated slowly by a few words at a time. (*b*) Fair small-hand, with capital letters, and figures, to be shown in copy-books.	(*a*) Eight lines dictated slowly from the same book. (*b*) Improved small-hand, to be shown in copy-books.	Writing from memory the substance of a short story or narrative read out twice by the Inspector; spelling, grammar, and handwriting to be considered.	A short letter on a subject to be prescribed by the Inspector. The form of composition, spelling, grammar, and handwriting to be considered.
Arithmetic.	Notation and numeration up to 1000. Simple addition and subtraction of numbers of not more than three figures. In addition, not more than five lines to be given.	Notation and numeration up to 10,000. The Multiplication Table to 5 times 12. Simple addition and subtraction of numbers of not more than ten figures. In addition, not more than eight lines to be given.	Notation and numeration up to 1,000,000. Four simple rules. Money and time tables.	Compound rules (money) and reduction (common weights and measures).† Aliquot parts of a pound sterling.	Practice, bills of parcels, and simple proportion.	Proportion, vulgar and decimal fractions.
History and Geography.				*Outlines of the History of Scotland, from Robert the Bruce to the Union of the Crowns. General outline of the Geography of Scotland.*	*Outlines of the History of Great Britain from the Union of the Crowns to the death of George III. Geography of Scotland, with special knowledge of the county in which the school is situated, and map drawing of it.*	*More detailed knowledge of the history in Standard V., with special knowledge of any historical events connected with the district in which the school is situated. Geography (with map drawing) of British Isles. Continental divisions of the world.*

N.B.—As to the words printed in italics, *see* Article 19. C. 3.

29. Scholars may not be presented a second time for examination—
(*a.*) under a lower Standard; *or*,

* Reading will be tested in the ordinary class books, if approved by the Inspector; but these books must be of reasonable length and difficulty, and unmarked. If they are not so, books brought by the Inspector will be used. Every class ought to have two or three sets of reading books. The class examination (Article 19 C. 1, 2) will be conducted so as to show the intelligence and not the mere memory of the scholars.

† The "weights and measures" taught in schools should be only such as are really useful; such as Avoirdupois Weight, Long Measure, Liquid Measure, Time Table, Square and Cubical Measures, and any measure which is connected with the industrial occupations of the district.

(*b.*) under the same Standard, unless they fail to pass in more than one subject in that Standard (Article 19 B. 3).

30. } *Suspended Articles.*
31. }

Reduction of Grant.

32. The amount which may be claimed by the managers (Articles 19 to 22) may be reduced—

(*a.*) If it exceeds 17*s.* 6*d.* per scholar in average attendance during the year (Article 13), by its excess above the income of the school from all sources whatever, other than the grant; *provided that* this reduction is not to bring the grant below 17*s.* 6*d.* per scholar.[1]

Exception.

In any *parish* (not burgh) in the counties of Inverness, Argyll, Ross, and Orkney and Shetland, "where a school rate "of not less than 3*d.* in the pound, on the rateable value of "the parish, has been levied" (Education Act, Sect. 67), this Article will not be enforced.

(*b.*) By not less than one-tenth nor more than one-half in the whole upon the inspector's report, for faults of instruction, discipline, or registration, on the part of the teacher, or (after six months' notice) for failure on the part of the managers to remedy any defect in the premises which seriously interferes with the efficiency of the school, or to provide proper furniture, books, maps, and other apparatus of elementary instruction. If the inspector at a visit without notice (Article 12), not less than six months after intimation has been given of the requirements of the Department, reports that they have not been carried into effect, a deduction may be made from the next grant to the school.

(*c.*)—

1. If a staff of pupil-teachers (Article 70) is not provided, at the rate of one for every 40 (or fraction of 40) scholars in average attendance, after the first 60—
   A deduction, at the rate of 1*l.* for the year, will be made on account of each of the first 20 scholars out of every 40 for whom a pupil-teacher is required but not provided.[2]
2. A certificated (Article 43) assistant teacher, or an assistant fulfilling the conditions of Article 79, is equivalent to two pupil-teachers.
3. In mixed, girls', and infant schools a woman (not less than 18 years of age), if employed throughout the day in the general instruction of the scholars, and in teaching sewing, is, if ap-

[1] *See* Elementary Education Act, 1876, sections 19 (1) and 53.

[2] According to this rule—
(1.) No pupil-teacher is required for the first 60 scholars.
(2.) One pupil-teacher is required for any number of scholars between 61 and 100, inclusive.
(3.) Two pupil-teachers are required for 101 to 140 scholars, and so on.

proved by the inspector, accepted as equivalent to a pupil-teacher.

(*d.*) By one-twelfth for each month of interval between the employment of two certificated teachers (Article 17 *d.*) This reduction is not made if the interval does not exceed *three* months, during which the school has been in charge of an uncertificated teacher.

33. If the excess of scholars has arisen from increased attendance since the last settlement of the school staff (Article 39), the amount claimed by the managers is not reduced under Article 32 (*c*).

School Diary or Log-Book.

34. In every school receiving annual grants, the managers must provide out of the school funds, besides the Code for the year, and registers of attendance (Article 17 *g.*)—

(*a.*) A diary or log-book.

(*b.*) A portfolio to contain official letters, which should be numbered in the order of their receipt.

35. The diary or log-book must be stoutly bound, and contain not less than 300 ruled pages.

36. The principal teacher must make at least once a week in the log-book an entry which will specify ordinary progress, visits of managers, and other facts concerning the school or its teachers, such as the dates of withdrawals, commencements of duty, cautions, illness, &c., which may require to be referred to at a future time, or may otherwise deserve to be recorded.

37. No reflections or opinions of a general character are to be entered in the log-book.

38. No entry once made in the log-book may be removed or altered otherwise than by a subsequent entry.

39. The summary of the inspector's report, after his annual visit, or any visit made without notice, and any remarks made upon it by the Department, when communicated to the managers, must be immediately copied *verbatim* into the log-book, with the names and standing (*certificated teacher of the ——class*, or *pupil-teacher of the ——year*, or *assistant teacher*) of all teachers to be continued on, or added to, or withdrawn from the school staff according to the decision of the Department upon the inspector's report. The correspondent of the managers must sign this entry, which settles the school staff for the year.

40. The inspector will call for the log-book and portfolio at every visit, and will report whether they appear to have been properly kept. He will specially refer to the entry made pursuant to Article 39, and he will require to see entries accounting for any subsequent change in the school staff. He will also note in the log-book every visit paid without notice (Article 12), making an entry of such particulars as require the attention of the managers.

SECTION II.—TEACHERS REFERRED TO IN THE PRECEDING SECTION.

41. The recognised classes of teachers are—(*a.*) Certificated teachers. (*b.*) Pupil-teachers. (*c.*) Assistant teachers.

42. Lay persons alone can be recognised as teachers; but this condition will not apply to any person to whom a certificate is granted under Article 66.

Certificated Teachers.

43. Teachers, in order to obtain certificates, must be examined (Article 44), and must undergo probation by actual service in school (Article 51).

Examination for Certificates.

44. Examinations are held in December of each year at the several training colleges under inspection (Article 100), and at such other centres as may be necessary.

45. A syllabus of the subjects of examination for male and female candidates respectively may be had on application to the Department (Article 14).

46. The names of candidates who desire to be examined must be notified to the Department (Article 14) before the first day of October preceding the examination.

47.[1] The examination for certificates is open to—

(*a.*) Students who have resided for at least one year in training colleges under inspection; *or*,

(*b.*) Candidates who are upwards of 21 years of age, and have either—

(1.) completed an engagement as pupil-teacher satisfactorily;

(2.) obtained a favourable report from an inspector; *or*,

(3.) served as assistants, for at least six months, in schools under certificated teachers.

(*c.*)[2] Graduates in Arts or Science of any University of the United Kingdom, who, after a course of training, for not less than *three* months, in an aided school, approved by one of the senior inspectors, satisfy such inspector of their practical skill as teachers.

Candidates, under sections (*a.*) and (*b.*), who at the time of the examination are not teachers of schools to which annual grants are or may be made, must be recommended by the authorities of their college, or by the managers of the school in which they last served.

48. Teachers attending the examination may at their option take the papers of the first or second year's students (Article 102).

48 (*a.*) Graduates (Article 47 *c*) are not required to take any papers save those on School Management, which will include questions to test their knowledge of elementary subjects[3] and the methods of teaching them.

49. A list is published showing the successful candidates, arranged in four divisions in the first year, and three divisions in the second year.

50. The relative proficiency of the candidates according to examination, and the nature of the professional training (Article 47) which they have received, are recorded upon their certificates.

[1] This Article (read with Article 79) shows how persons who have not been pupil-teachers may qualify themselves for employment as teachers of public or State-aided schools.

[2] See Circular No. 30, p. 439.

[3] See Article 28, and First Schedule (columns 4-7).

Probation.

51. Candidates for certificates, after successfully passing their examination, must, as teachers continuously engaged in the same schools, obtain two favourable reports from an inspector, with an interval of one year (Article 13) between them; and, if the first of these reports be not preceded by service of three months (at the least) since the examination, a third report, at an interval of one year after the second report, is required. If the second (or third) report is favourable, a certificate is issued.

52. Teachers under probation satisfy the conditions which require that schools be kept by certificated teachers.

Certificates.

53. Certificates are of four classes. No certificate is originally issued above the second class. The fourth (lowest) class includes special certificates for teachers of infants and of small schools.

Certificates of the First and Second Class.

54. Candidates who are placed by examination in the first division of the second year (Article 49), and graduates examined under Article 47 (*c.*), receive certificates of the second class, which can be raised to the first class by good service only.

(*a.*) Certificates remain in force for 10 years from the date of their issue, after which interval they are open to revision according to the intermediate reports.

Certificates of the Third Class.

55. Candidates who are placed by examination in the second or third division of the second year, or in one of the first three divisions of the first year (Article 49), receive certificates of the third class, which can be raised (Article 54 (*b.*)) by good service only.

Certificates of the Fourth Class.

56. Candidates who are placed by examination in the fourth division (Article 49) receive certificates of the fourth class.

57. Certificates of the fourth class do not entitle the teachers to have the charge of pupil-teachers.

58. Certificates of the fourth class can be raised only by examination.

59. *During the period ending 31st December* 1879, certificates of the *fourth* class may be granted, without examination, upon the report of an inspector, to acting principal teachers who satisfy the following conditions:—

1. They must, at the date of the inspector's report—
   - (*a.*) be above 25 years of age;
   - (*b.*) have been in charge of schools for at least five years; and,
   - (*c.*) present certificates of good character from the managers of their schools.

2. The inspector must report—

(*a.*) That they are efficient teachers;

(*b.*) That not less than 20 children, who had been under instruction in their schools during the preceding six months, were individually examined (Article 28); and,

(*c.*) That at least 15 of the "passes" of these scholars in reading, writing, or arithmetic, were made in the second or some higher standard.

59. (*a.*) If the inspector reports that the results of the examination under Articles 19 and 21 show that a teacher is thoroughly efficient, the certificate granted under this Article may be of the *third* class; but it will be withdrawn or reduced (Article 69) if the teacher fails to instruct his, or her, pupil-teachers properly.

59. (*b.*) In schools attended by infants only (under 7 years of age), the conditions of Article 59, 2, (*b.* and *c.*) are not required to be fulfilled.

59. (*c.*) In schools having a total population of less than 100 souls within three miles of them, for which no other school is available, the conditions of Article 59, 2, (*b.* and *c.*) are not required to be fulfilled. In such cases certificates will be granted to women only, and will not qualify the holders (Article 17 *d.*) of them for the charge of schools of any other class.

59. (*d.*)[1] Graduates of a Scotch University who have satisfied an inspector of their practical skill as teachers of the subjects specified in Article 28 will, *up to the 1st December* 1879, be recognised as provisionally certificated (Article 61 (*a.*)) in the third class, from the date at which they take temporary charge of a public or State-aided school, on condition that they attend the next examination for certificates (Article 44). If they fail to attend that examination (or to pass it successfully), the provisional certificate will be cancelled as from the 1st of January (or 1st of March) following the date of the examination.

60. Pupil-teachers who have completed their engagement with credit, and who have passed satisfactorily either the examination for the close of their engagement (Schedule I.) or (Article 94) that referred to in Article 91, may, if specially recommended by the inspector,[2] on the ground of their practical skill as teachers, be provisionally certificated in the fourth class for immediate service in charge of schools which have an annual average attendance of not more than 60 scholars.

61. After their 25th year of age (completed) their provisional certificates must have been exchanged for permanent certificates (Article 43), or are *ipso facto* cancelled.

61. (*a.*) The provisional certificate is confined to an entry of the pupil-teacher's name in a register kept by the Department, and does not involve the issue of any certificate to the pupil-teacher.

62. The managers of several schools may combine to employ an organising teacher to superintend the certificated teachers of these schools (*see footnote to Article* 17 (*i.*)).

[1] See Circular No. 30, p. 439.

[2] The managers are informed (Article 30) at the close of a pupil-teacher's engagement, whether the pupil-teacher can be provisionally certificated under this Article.

Future Rating of existing Certificates.

63 (*a.*) Existing certificates of the first or second class are rated as of the first or second class.

(*b.*) Existing certificates of the third class, and infant school certificates of the first class, are rated as of the third class.

(*c.*) Existing infant school certificates of the second class are rated as of the fourth class.

64. Certificates of the second or third class will be open to revision at the end of 10 years from the date of their issue, or of their last revision.

65. The class of any certificate not yet issued will be fixed by Articles 54, 55, and 56.

Certificates for acting Teachers of Public Schools. (*Education Act*, 1872, *Sect.* 56.)

66. A certificate will be granted on the following conditions, to every person not already certificated, who at the date (*6th August* 1872) of the passing of the Scotch Education Act was—

The *principal* teacher of a public school, as defined by that Act; or,

Teacher in a burgh school and a member of the council of a Scotch University (Education Act, Sect. 56.):—

(1.) Such persons being graduates, or members of council, of a Scotch University, will, if they are above 30 years of age, and have been employed as teachers for 10 years, receive certificates of the *first* class.

(2.) If, being graduates, or members of council, they are under 30 years of age, or have served as teachers for less than 10 years, they will receive certificates of the *second* class, which will be subject to Article 54 (*b.*)

(3.) In all other cases the certificates will be of the *third* class (Article 55) for *male*, and of the *fourth* class (Article 56) for *female* teachers, and will be subject to Articles 57 and 58.

(4.) The certificates will be issued on a favourable report from an inspector, on any public school, to which grants are or may be made, under the charge of such teacher.

Reports of Managers and Inspector.

67. The managers must annually state whether the teacher's character, conduct, and attention to duty have been satisfactory.

68. The inspector reports of each school visited by him whether it is efficient in organisation, discipline, and instruction.

69. A certificate may, at any time, be recalled, suspended, or reduced if the certificate or report under Articles 67 and 68 is not satisfactory; but not until the Department has, through the managers, given the teacher an opportunity of explanation.

Pupil-Teachers.

70. Pupil-teachers are boys or girls employed to serve in a day[1] school on the following conditions, namely:—

[1] Pupil-teachers may not be employed in an evening school.

(*a.*) *That the school* is reported by the inspector to be—

1. Under a duly certificated teacher (Articles 43 and 57).
2. Held in suitable premises (Article 17 *c.*)
3. Well furnished and well supplied with books and apparatus.
4. Properly organised and skilfully instructed.
5. Under good discipline.
6. Likely to be maintained during the period of engagement.

(*b.*) *That the pupil-teachers* be not less than 14 years (completed) of age at the date of their engagement.

(*c.*) Be of the same sex as the certificated teacher under whom they serve; but in a mixed school female pupil-teachers may serve under a master, and may receive instruction from him out of school hours (Schedule II. 5), on condition that some respectable woman, approved by the managers, be invariably present during the whole time that such instruction is being given.

(*d.*) Be presented to the inspector for examination at the time and place fixed by his notice (Article 11).

(*e.*) Pass the examinations and produce the certificates specified in Schedule I.[1]

(*f.*) *That the managers* enter into an agreement in the terms of the memorandum in the Second Schedule to this Code. A copy of this memorandum is sent to the managers for every candidate approved by the Department, and unless duly completed does not satisfy Article 32 (*c.*)

(*g.*) That not more than *three* pupil-teachers are engaged in the school for every certificated teacher serving in it.

(*h.*) When the average attendance exceeds 220, a second adult certificated or assistant (Article 79) teacher will be required.

(*i.*) Two *stipendiary monitors* will be allowed—

1. In place of a *fourth* pupil-teacher required by Article 32 (*c.*); or,
2. If less than four pupil-teachers are required by Article 32 (*c.*), to fill, for two years, the place of *one* of them.

(*k.*) *Stipendiary monitors* must—

1. Be not less than 12 years of age at the date of their appointment;
2. Be recommended by the inspector, at his annual visit, (Article 11), after then passing the examination in reading, writing, and arithmetic for Standard IV., V., or VI.
3. Pass the examination for the next higher Standard at the end of their first year;
4. Be paid a stipend fixed by the managers.
5. Assist for not more than three hours each day in the school, receiving during the rest of the school hours special instruction either by themselves or in one of the higher classes of the school.

[1] A pupil-teacher whose success (Article 94) at the examination for admission to a training college, is announced before the date of the examination for the close of the last year of his (or her) engagement, need not attend the latter examination for the purposes of Article 19 E, 60, or 79.

71. The Department is not a party to the engagement, and confines itself to ascertaining, on the admission of the pupil-teacher and at the end of each year of the service—

(*a.*) Whether the prescribed examination is passed before the inspector.

(*b.*) Whether the prescribed certificates are produced from the managers and teachers.

72. Whatever other questions arise upon the engagement may be referred to the Department (provided that all the parties agree in writing to be bound by the decision of the Department as final), but, otherwise, must be settled as in any other hiring or contract.

73. Vacancies in the office of pupil-teacher, or stipendiary monitor, which occur in the course of any year (Article 13) must not be filled up until after the next examination by the inspector.

74. The candidate or candidates for such vacancies must be engaged in the meantime by the week only as *temporary monitors*, and the memorandum of agreement (Article 70 *f.*) will not be issued by the Department to the managers until the inspector's report has been examined.

75. *Temporary monitors* engaged by the week, pursuant to Article 74, for the supply of vacant pupil-teacherships during a current year (Article 13), satisfy Article 32 (*c.*), provided—

(*a.*) That a sufficient number of candidates to complete the requisite proportion of teachers to scholars pass the next examination for admission (Article 77) to permanent engagements; and,

(*b.*) That the vacancies are reported to the Department as soon as they occur, and have been occasioned by causes which are accepted by the Department as satisfactory.

76. Except in the cases provided for by Article 75, each vacancy in a pupil-teachership during a current year (Article 13) works a forfeiture under Article 32 (*c.*)

77. The qualifications and certificates required of candidates for admission, and of pupil-teachers in each year of their service, are regulated by the First Schedule annexed to this Code.

Pupil-Teachers who have successfully completed their Engagement.

78. At the close of their engagement pupil-teachers are perfectly free in the choice of employment. If they wish to continue in the work of education, they may become assistants in schools (Article 79), or may be examined for admission into a training college (Article 91), or may be provisionally certificated for immediate service in charge of small schools (Article 60).

Assistant Teachers.

79. Pupil-teachers who have completed their engagement with credit, (having passed satisfactorily either of the examinations referred to in Article 60) and candidates, not having been pupil-teachers (Article 93 *c*), who have passed with success (Article 94) the examination referred to in Article 91, may serve as assistants in schools in place of pupil-teachers, without being required to be annually examined.

80. Such assistants cease to fulfill the conditions of Article 32 (*c.*), if at any time the inspector reports them to be inefficient teachers, or if they fail to produce from the managers, and from the principal teacher,

of their school, the same certificates of conduct, attention to duty, and obedience as are required from pupil-teachers.

81. A vacancy caused by the withdrawal of an assistant in the course of any school year (Article 13) may be supplied by the appointment of temporary monitors, pursuant to Articles 74, 75, or of another assistant, qualified according to Article 79.

82. Assistants make their own terms with the managers, both as to hours and wages.

82 (*a.*) Assistants are counted as part of the school staff (Article 39) from the date at which their appointments are notified to, and approved by, the Department.

PART II.—TRAINING COLLEGES.

SECTION I.

83. A training college includes—

(*a.*) A college for instructing candidates for the office of teacher;

(*b.*) A practising school, in which such students may learn the exercise of their profession; and,

(*c.*) In some cases, a hall in which the students are boarded and lodged.

84. No grant is made to a training college unless the Department is satisfied with the premises, management, and staff.

SECTION II. GRANTS TO TRAINING COLLEGES.

85. Annual grants are made to practising schools (Article 83 *b.*) on the same conditions as to other schools.

86. Grants are placed to the credit of each college of 100*l.* for every master, and of 70*l.* for every mistress, who, having been trained in such college during two years—

(*a.*) completes the prescribed period of probation (Article 51), and becomes qualified to receive a certificate as a teacher in a school to which annual grants may be made, or in a training college;

(*b.*) is reported by the proper department in each case to have completed a like period of good service as an elementary teacher in the Army or Royal Navy, or (within Great Britain) in Poor Law Schools, Certified Industrial and Day Industrial Schools, or Certified Reformatories.

87. Teachers who have been trained for one year only may obtain certificates after probation (Article 51), or may be reported by the proper Department, upon the same terms as others; and grants, of half the amounts specified in Article 86, may be placed to the credit of the colleges in which they were trained, provided—

(*a.*) they completed their training before 1st January 1864; *or*,

(*b.*)[1] are teachers of infants, having—

(1.) received a complete and special course of training for that service in their colleges, which must have been previously recognised by the Department as providing such a course; and,

(2.) undergone their probation in infant schools.

[1] This Article will be cancelled in respect of teachers trained after the year 1878.

88. The annual grant to each college is paid out of the sums standing to its credit (Articles 86, 87) at the beginning of the year, after the adjustment under Article 90 (*c.*)

Exception:—

This Article is not applied to a college for the first five years during which grants are made to it.

89. The grant must not exceed—

(*a.*) 75 per cent of the actual expenditure of the college for the year, approved by the Department and certified in such manner as the Department may require.

(*b.*) 50*l.* for each male, and 35*l.* for each female, Queen's scholar (Article 96), attending for continuous training throughout the year for which it is being paid.

90. The annual grant to each college is paid as follows:—

(*a.*) An instalment of 12*l.* (males), or 8*l.* (females) is paid on 1st March, 1st June, and 1st September, in respect of every Queen's scholar (Article 96) attending for continuous training throughout the year.

(*b.*) Part of the instalment of the 1st of September may be suspended, if payment of the full amount then due would cause the limit under Article 89 (*a.*) to be exceeded.

(*c.*) The balance is adjusted as soon as the college accounts for the year have been closed, audited, and approved by the Department.

SECTION III.—ADMISSION INTO TRAINING COLLEGES.

91. An examination of candidates for admission is annually held at each college in summer, commencing at 10 A.M. on the first Wednesday after the 2d of July (3*d July* 1678).

92. The examination extends to the subjects required in the course of a pupil-teacher's engagement (Schedule I.).

93. The candidates are selected, and admitted to the examination, by the authorities of each college on their own responsibility, subject to no other conditions, on the part of the Department, than that the candidates—

(*a.*) intend *bonâ fide* to adopt and follow the profession of teacher in schools fulfilling the conditions of Article 86 (*a.*) or (*b.*)

(*b.*) having been pupil-teachers, have successfully completed their engagement.

(*c.*) not having been pupil-teachers, will be more than 18 years of age on the 1st of January next following the date of the examination. This article will apply to pupil-teachers whose engagement may have been determined under section 6 of the memorandum of agreement (Article 70 *f.*), without discredit to themselves, and for reasons approved by the Department.

94. The successful candidates are arranged in *three* classes in order of merit.

94 (*a.*) A place in the *third* class qualifies for employment as an assistant teacher (Article 79); but not for admission to a training college, or for a provisional certificate (Article 60).

95. The authorities of each college may propose to the Department

for admission any candidate declared to be admissible pursuant to Article 94.

96. Such candidates when admitted are termed *Queen's scholars.*

97. Before candidates are admitted—

(*a.*) The medical officer of the college must certify the state of their health to be satisfactory, and that they are free from serious bodily defect or deformity; and,

(*b.*) They must sign a declaration signifying their intention conformably to Article 93 (*a.*)

98. The authorities of each college settle their own terms of admission.

99. Upon proof by the authorities of any college that candidates have not fulfilled the conditions signed by them on admission into the college, the Department will refuse to grant teachers' certificates (Article 53) to such candidates, or to admit them to probation for certificates (Article 51).

SECTION IV.—EXAMINATION OF STUDENTS IN TRAINING COLLEGES.

100. An examination of the students is held in December at the several colleges. This examination will commence in 1878, on Monday the 16th of December, at 3 P.M.

101. No student may be presented for examination except such as, at the date of their admission, satisfied Article 93, and have been under instruction throughout the whole year. No such student may be left out.

102. (*a.*) The students have a different examination according as they are males or females, or are at the end of a first or second year of training.

(*b.*) Queen's scholars (Article 96) may, with the consent of the authorities of their training college, attend during the *winter session* of each year of their instruction in such college, one or more of the classes in a Scotch University, prescribed for graduation in Arts or Science. If they attend any of these classes, the authorities of the training college may, during the university session, dispense with their attendance at college, each day, for such time as they may deem necessary.

(*c.*) The examination for certificates, in the subjects taught in these classes, will be conducted by a board of examiners composed of professors in the Scotch Universities and Her Majesty's Inspectors of schools.

(*d.*) Those candidates who at the examination (Article 91) for admission pass with credit in certain subjects (Latin, Greek, and Mathematics) will be specially indicated in the class list (Article 94); and the university fees (*b.*) of such of them as become Queen's scholars may be treated as part of the college expenditure under Article 89.

103. The first year's syllabus for females includes special subjects for the teachers of infants. Candidates who pass in these subjects, and complete their probation (Article 51) in schools for infants, receive special mention thereof (*stamp*) on their certificates.

104. Students who pass successfully through two years of training receive special mention thereof (*stamp*) on their certificates.

105. Students of the first year who fall into the fourth division (Article 49) are required to take up the first year's subjects again at the end of their second year.

PART III.—SPECIAL PROVISIONS.

Evening Scholars.

106. The managers of any school to which annual inspection has already been promised (Article 11) may apply in writing, before the 1st of January, to *the inspector of the district* for an examination of their evening scholars (Article 22). This application must be renewed annually to the inspector.

107. Only one examination is held per annum of evening scholars in the same school, and it may be held on any day, between the 1st of January and 30th of April, that may be arranged with the inspector, provided that the school has met the required number of times (Article 22) since the date of the last examination.

108. *If the evening school is connected with a day school, in receipt of annual grants, and the accounts of the two schools are kept as one account*, the grant for the examination of the evening scholars is paid as part of the next annual grant to the whole school (Article 13).

109. *If the evening school is not connected with a day school, in receipt of annual grants, or being so connected has a distinct and separate account*, the grant is paid as soon as possible after the 30th of April; at which date, in such cases, the evening school year is considered to end.

110. The inspector may make arrangements for the examination, at some convenient centre, of the evening scholars of several schools.

111. A separate examination will not be held for any school, unless 20 scholars are to be presented to the inspector. If less than 20 scholars are to be presented, they can be examined only at a collective examination (Article 110), or at the same time with the day scholars. The number to be presented must be stated in the managers' annual application (Article 106) to the inspector.

112. The inspector may either hold the examination himself, or entrust it to an assistant approved by the Department.

Certificates under Labour Acts.

113. The inspector after his yearly visit (Article 11) to a school will grant such certificates as may be required for scholars who have reached the standard (Article 28) prescribed by, or pursuant to the provisions of, any Act for regulating the education of children employed in labour.

114. The inspector may depute his assistant, or the certificated teacher of the school, to sign these certificates.

115. Certificates will be issued for those scholars only who pass in all the three subjects (Article 28) in the prescribed standard, or in a higher standard.

116. For the purpose of granting these certificates, the inspector, or his assistant, will examine—

(1.) Scholars in the school, whether they have made 250 attendances (Article 19 B), or not;

(2.) Other children, not being scholars in the school, allowed by the managers to attend on the day of inspection.

117. If there is no school under inspection at which the children of any parish, or group of parishes, for whom certificates are required, can

conveniently attend for examination, application for a special examination may be made by any person interested in procuring such certificates, subject to the following regulations :—

(*a.*) The application shall be sent *to the inspector for the district* not less than 14 days before the date at which it is desired that the examination should be held.

(*b.*) The applicant must specify the number of children (not less than 15) to be presented for examination, and must undertake,—

That all children within the parish, or group of parishes, for whom certificates are needed, will be summoned to and allowed to attend the examination; and—

That a convenient room will be provided for the examination at such day and hour as shall be fixed by the inspector.

(*c.*) The applicant must satisfy the inspector that he is a proper person to conduct the preliminary proceedings, and if necessary, to receive for distribution the certificates which may be granted after the examination.

CHAPTER III.—PENSIONS.

118. A limited number of pensions will be granted to teachers who were employed in that capacity at the date (9th May 1862) when the minutes [1] relating to pensions were cancelled :—

(1.) The proposed pensioner must—

(*a.*) Be a certificated teacher in a public, or State-aided school, or training college, at the time when the pension is applied for.

(*b.*) Have become incapable, from age or infirmity, of continuing to teach a school efficiently.

(*c.*) Have been employed continuously since the 9th of May 1862, as principal or assistant teacher in elementary schools, or in training colleges.

(*d.*) Be recommended by Her Majesty's Inspector, and the managers of the schools served in.

(*e.*) Be 60 years of age (if a man), or 55 (if a woman), unless the pension is applied for on the ground of failure of health.

(2.) Pensions will be granted to those teachers only who have been, during the seven years preceding the application on their behalf, employed in schools or colleges under inspection, and are deserving of such assistance.

(3.) Applications for a pension will be received only from the managers of the school in which the teacher is serving at the date of retirement.

(4.) These applications will be collected for decision, on their comparative merits, twice a-year, about Lady Day and Michaelmas.

(5.) Teachers who entered on the charge of a school before 1851, will be regarded, *cæteris paribus*, as having the first claim.

(6.) The maximum number and value of pensions receivable at one time, in England and Scotland together, will be as follows :—

[1] Minutes of 25th August and 21st December 1846 and 6th August 1851.

270	20 pensions of 30*l.* each	£600
	100 pensions of 25*l.* each	2500
	150 pensions of 20*l.* each	3000
		£6100
	Donations or special gratuities (each year)	400
		£6500

(7.) The pension will be paid yearly, on certificates proving identity and good behaviour.

CHAPTER IV.—REVISION OF CODE.

119. The Department, as occasion requires, may cancel or modify articles of the Code, or may establish new articles, but may not take any action thereon until the same shall have been submitted to Parliament, and shall have lain on the table of both Houses for at least one calendar month.

120. The Code shall be printed each year, in such a form as to show separately all articles cancelled or modified, and all new articles, since the last edition, and shall be laid on the table of both Houses within one calendar month from the meeting of Parliament.

121. The schedules and notes annexed to the Code shall have the same effect as the articles of the Code, and shall be subject to the provisions of Articles 119 and 120.

122. The changes in this Code will not affect annual grants falling due before the 1st of April 1878.

(Signed) RICHMOND AND GORDON,
Lord President of the Council.

SANDON,
Vice-President of the Committee of Council on Education.

F. R. SANDFORD,
Secretary.

SCOTCH EDUCATION DEPARTMENT,
12*th February* 1878.

SCHEDULES

FIRST

QUALIFICATIONS AND CERTIFICATES OF PUPIL-TEACHERS

—	1. Health.* N.B.—Copies of all these Certificates should be entered in the Log Book.	2. Character and Conduct	3. Reading and Repetition.	4. English Grammar and Composition.
For Admission (*or end of 1st Year if admitted before 1st May* 1878).	A medical certificate that candidate is not subject to any infirmity likely to interfere with profession of teacher.	A certificate from managers that the moral character of the candidates and of their homes justifies an expectation that the instruction and training of the school will be seconded by their own efforts and the example of their parents.	To read with fluency, ease, and expression.	The noun, verb, and adjective, with their relations in a simple sentence; and to write from dictation in a neat hand, with correct spelling and punctuation, a passage of simple prose. *[In the following years, copy-writing—one line of large hand and one of small hand—will be required.]*
End of 1st (*or* 2d) Year.	Certificate from managers that pupil-teacher has not suffered any failure of health likely to incapacitate for profession of teacher.	1. Certificate of good conduct from the managers. 2. Certificate of punctuality, diligence, obedience, and attention to their duties, from the master or mistress.	To read as above; and to repeat 50 consecutive lines of poetry with just expression and knowledge of the meaning.	The pronoun, adverb, and preposition, with their relations in a sentence; and to write from memory the substance of a passage of simple prose, read to them with ordinary quickness or a short letter.
End of 2d (*or* 3d) Year.	Same as at end of first year, together with one from a medical practitioner.	Same as above - -	To read as above; and to repeat 40 consecutive lines of prose.	The conjunction, with the analysis of sentences; and to write full notes of a lesson on a subject selected by the inspector.
End of 3d (*or* 4th) Year.	Same as at end of first year.	Same as above - -	To read as above; and to repeat 100 lines of poetry.	Recapitulation of the preceding exercises; the meaning in English of the Latin prepositions; and to write a letter, or to write from memory the substance of a longer passage than at the end of second year.
End of 4th (*or* 5th) Year.	Same as at end of first year.	Same as above - -	To read as above; and to repeat 80 lines of prose. N.B.—*The passages for repetition in prose and poetry must be of a secular character, and taken from some standard English writer, approved by Her Majesty's Inspector. The meaning and allusions if well known will atone for deficiency of memory.*	Recapitulation of the preceding exercises; to know something of the sources and growth of the English language; and to write an original composition on some simple subject selected by Her Majesty's Inspector.

* Scrofula, fits, asthma, deafness, great imperfections of the sight or voice, the loss of an eye from constitutional disease, or the loss of an arm or leg, or the permanent disability of either arm or leg, curvature of the spine, hereditary tendency to insanity, or any constitutional infirmity of a disabling nature, is a positive disqualification in candidates for the office of pupil-teacher.

Female pupil-teachers, before admission, must produce a certificate from the schoolmistress and managers that they possess reasonable competency as sempstresses; and, at the annual examinations, must bring certified specimens of plain needlework to the inspector, together with a statement from the schoolmistress specifying whether they have been receiving practical instruction in any other kind of domestic industry. The inspector, at the time of examination, or afterwards, will obtain the opinion of some competent person upon the merit of the needlework. A paper of questions on domestic economy is given to the female candidates for admission to Training Colleges at the Christmas examination (Article 91).

10. Drawing.† *Optional.*	11. Music.‡ *Optional.*
1. Pupil-teachers who during their engagement successfully work exercises in freehand, geometry, perspective, model, and blackboard drawing, are credited with marks in any future examination under Articles 44, 91, or 100.	The natural scale, and the intervals found in it. Shapes and relative values of notes and rests. Places of notes on the *treble* stave.
2. The exercises may be worked in any order, except that pupil-teachers cannot be examined in blackboard drawing till they have passed in all the other subjects.	Relation of treble stave to *bass*. Places of notes on both. Simple - common, and simple-treble time.
3. Examinations are held— (1.) In *March* at the elementary schools in which drawing is taught. (2.) In *May* at the Schools' of Art and Art Classes connected with the Department of Science and Art.	Scales and intervals altered by sharps and flats. Compound times.
4. Pupil-teachers engaged in schools at which drawing is taught by a qualified teacher should be examined at their own schools in March. Pupil-teachers engaged in schools at which drawing is not taught, or at which no examination is held in March, and pupil-teachers attending Schools of Art or Art Classes, may be examined in May. They cannot be examined *both* in March and May, nor on the occasion of H.M. Inspector's visit to their school.	The minor scale in its diatonic forms.
5. Pupil-teachers may also, with the consent of the authorities of a training college, be examined in blackboard drawing (*only*) at the examination held, towards the close of the year, at each of these colleges.	The minor scale in its chromatic forms, and the chromatic intervals found in it.

given to candidates who have been pupil-

times of examination, apply by letter to "The

rks will be given to candidates who pass the

dictation; *or*, naming such notes sounded

more measures, in time; *or*, giving the time,

for preceding years in columns 4, 5, 6, 7, and

SECOND SCHEDULE.

I.—Form of Memorandum of Agreement (Article 70 *f*.)

(N.B.—*For use in Public Schools under the Management of a School Board. A similar Form is supplied by the Department for use in other Schools.*)

MEMORANDUM OF AGREEMENT between the School Board of [1] _____ and [2] _____ herein-after called *the surety*, the [3] _____ of [4] _____ herein-after called *the pupil-teacher* and the said pupil-teacher.

The board, for themselves, and their successors, agree with the surety, h[5] _____ heirs and executors, and the pupil-teacher, as follows:—

1. The board agree to engage the pupil-teacher to serve under a certificated teacher during the usual school hours in keeping the [6] _____ public school of the board, or any other public school of the board to which the pupil-teacher may be transferred with the previous sanction of the Scotch Education Department, and teaching the scholars thereat, but so that the pupil-teacher shall not serve therein less than three or more than six hours upon any one day, nor more than 30 hours in any one week, Sunday being expressly excluded from this engagement.

2. This engagement shall begin on the first day of [7] _____ 18____, and, subject to the proviso in paragraph 4, shall end on the last day of [8] _____ 18[9] ____, but if the pupil-teacher shall, with the consent of the other parties hereto, attend the examination for admission into training colleges (*or a Scotch University*) in July (*or October*) next preceding the last-mentioned date, this engagement may end on the 31st day of the month of December (*or of October*), next following such examination, provided the pupil-teacher then enters a training college (*or University*).

3. The board will pay to the pupil-teacher as wages [10] _____ per [11] _____ in the first year, and this sum shall be increased by [10] _____ per [11] _____ in each subsequent year of the engagement, but such increase may be stopped at the discretion of the board for the unexpired remainder of any year after receipt of notice from the Scotch Education Department that the pupil-teacher has failed to pass the examination or to fulfil the other conditions of a pupil-teacher, according to the standard of the preceding year as prescribed in the Articles of the Code of the said Department applicable to the case.

4. Provided always, that if the pupil-teacher fails to pass an examination for any year as specified in paragraph 3 of this agreement, this engagement shall, on the application of the board, and with the consent of the Education Department, end on the last day of _____ 188___.*

When this engagement is so extended, the course of study and the wages of the pupil-teacher in the remainder of the year succeeding that in respect of which the pupil-teacher failed shall be the same as in the last-mentioned year; and that year shall not be reckoned in calculating any payment to be made under paragraph 6 of this agreement.

5. The board will cause the pupil-teacher, while the school is not being held, to receive, without charge, from a certificated teacher of the said school, special instruction during five hours per week, of which hours not more than two shall be part of the same day. Such special instruction, and any instruction in secular sub-

[1] Insert name of the School Board.

[2] Insert names, description, and address in full, of father or other person who is to be the surety of the pupil-teacher.

[3] Insert father or other relation or friend of the pupil-teacher, as the case may be.

[4] Insert name in full of the pupil-teacher.

[5] Insert his or her.

[6] Insert name of the school.

[7] The month as defined by Article 11 of the Code.

[8] Insert name of preceding month.

[9] The term must be for four full years; or any less number of years, not under two, provided (*a*) that the candidate has passed for admission the examination fixed for a later year in proportion to the reduced term of service; and provided also (*b*) that the end of the reduced term of service fall beyond the candidate's 18th year (completed).

[10] The sum to be inserted must be fixed at the discretion of the parties, having in view the local rate of wages, and the advantages of the school as a place wherein to learn the business of a teacher.

[11] Insert week, or as the parties may agree.

* One year later than the second date in paragraph 2.

jects, given to the pupil-teacher during school hours, shall be in the subjects in which the pupil-teacher is next to be examined pursuant to the said Articles.

6. The pupil-teacher shall be liable to dismissal without notice for idleness, disobedience, or immoral conduct, of a gross kind, respectively; and this engagement shall be terminable on the part of the board or of the surety and pupil-teacher by a written notice of six months, or, in lieu of such notice, by the payment on the part of the board or of the surety and pupil-teacher of £3 in the first year, £4 in the second, and an additional pound in each succeeding year of the engagement, but never exceeding £6 in the whole; such payment to be recoverable as liquidated damages by the board or the surety, as the case may be, over and above the settlement of all other accounts between the parties.

[5] Insert his or her.

7. The pupil-teacher enters into this engagement freely and voluntarily on h[5]_____ own part, and with the privity and consent of the surety.

[12] Here insert a testing clause according to the form of the law of Scotland.

8. The surety agrees with the board and their successors, to clothe, feed, lodge, and watch over the pupil-teacher during the continuance of this engagement in a proper manner.

In witness whereof[12]

N.B.—1. This agreement must be executed *as follows, viz.:*—
(1.) By three members of the school board, being the statutory quorum thereof.
(2.) By the surety.
(3.) By the pupil-teacher.

2. If it be executed with blanks still remaining in it, except in the testing clause, they cannot legally be filled up afterwards, unless as part of a new agreement requiring a new stamp. An incomplete agreement does not satisfy Article 32 (*c.*) in the Code.

3. The agreement, when executed, and after the testing clause has been completed, should be deposited with the school papers (Article 34 *b.*) The surety should have either an executed duplicate (which requires a second stamp) or a certified copy. The agreement exists only between the parties who execute it.

II.—Form of New Agreement on Change of Managers.

(N.B.—*For use in Schools* not *under the Management of a School Board.*)

[1] *The surety* in the existing Memorandum.

[2] The managers in the original Memorandum, and the executors of any of them who are deceased.

[3] The name, description, and address of the new manager or managers.

[4] The name, description, and address of the present managers, excluding such as will be no longer managers, and including the new manager or managers.

[5] The new manager or managers.

[6] Deceased or outgoing manager or managers.

MEMORANDUM OF AGREEMENT between [1]_____
within and herein-after described as *the Surety;* [2]_____
the persons within described as *the Managers;* [3]_____
and [4]_____
herein-after described as "the Managers."

1. The said surety and the said [2]_____ hereby mutually rescind the within written agreement, and agree that the same shall be henceforth determined, and of no further force as regards the future.

2. The said surety and the said "managers" hereby mutually agree to adopt and enter into an agreement in the same words, and to the same effect as the within written agreement for the unexpired term thereof; and that the like obligation and responsibility shall exist and be of force between them in like manner, and to all intents and purposes as if the name of the said [5]_____

[7] Here insert a testing clause according to the form of the law of Scotland.

had been inserted therein and signed thereto, instead of the name of the said [6]_____

In witness whereof [7]

N.B.—This Memorandum must be executed *by all the parties named in it, viz.* :—
Manager.
Surety.
Pupil-teacher.

If it be executed with blanks still remaining in it, they cannot legally be filled up afterwards, except as part of a new agreement requiring a new stamp. An incomplete memorandum does not satisfy Article 32 (*c.*)

III.—Form for Cancelling Engagements of Pupil-teachers.

(*To be endorsed on the original Memorandum.*)

The within written Memorandum of Agreement is hereby cancelled by the undersigned parties.
In witness whereof *

* Here insert a testing clause according to the form of the law of Scotland.

N.B.—The cancellation must be executed by the same parties by whom the Memorandum of Agreement was executed, except that it is not necessary, in the case of public schools, that the same three members of the school board should sign it.

THIRD SCHEDULE.

Needlework.

Infants' Department (Boys and Girls).

Lower Division.

Position drill, hemming (simple) on strips, beginning with black cotton, rising to red and going on to blue.
Knitting.—2 needles. A strip 3 inches by 18 inches with cotton.

Upper Division.

Threading needles; hemming, simple and counter; seaming; felling; *pleating; fixing a hem.* Any garment which can be completed with the above stitches—*e.g.*, a child's plain pinafore or shift.
Knitting.—2 needles. A strip, as above. (4 *needles*) *muffatees.*
Netting (for boys).

Girls' Department.

1st Stage. For children who have not been in an infants' department.

1. Hemming.—Strips in coloured cottons as in infants' department.
2. Hemming, simple and counter. Any garment which can be completed by the above—*e.g.*, a child's plain shift or pinafore.

Knitting.—2 needles. A strip, as above.

2d Stage. For children who have not passed the Upper Division in infants' department.

Hemming; seaming; felling; pleating. Any garment which can be made with the above stitches—*e.g.*, an apron, or plain shift pleated into a band.
Knitting.—2 needles. Plain and purled rows alternately. A strip, as above. 4 needles. Wristlets or muffatees.

3d Stage. The junction of the two departments (girls and infants).

The work of previous stages, with greater skill; and with the addition of stitching; sewing on strings. Any garment which can be made with the above stitches—*e.g.*, a shift pleated into stitched band.

Herring-boning.—A flannel petticoat.

Knitting.—4 needles. Plain and purled alternately—*e.g.*, socks *and girls' stockings.*

Darning and simple marking, on canvas.

4th Stage.

The work of previous stages, with greater skill; and gathering; stroking; setting in; marking on coarse material; button-holing; sewing on buttons. Any garment which can be made showing all the above stitches—*e.g.*, a plain night-shirt.

Herring-boning.—Any garment which will show this stitch.

Cutting out.—Any plain garment such as the children can make up to this stage.

Plain darning and mending.—Stockings; garments; patching old garments.

Knitting.—4 needles—*e.g.*, a full-sized youth's sock and girls' stockings.

5th Stage.

The work of previous stages, with greater skill; and tucks run; whipping; setting on frills; marking on finer material. Any garment which can be finished by the above stitches—*e.g.*, a night-dress, man's shirt, or girl's frock.

Knitting.—4 needles. A full-sized boy's "knickerbocker" stocking.

Darning.—Plain *and Swiss* darning; stockings. Patching and darning garments in calico and flannel.

Cutting out.—Any garment such as the children can make up to this stage.

6th Stage.

The work of previous stages, on finer material, and with greater skill; and *knotting; feather stitch.*

Knitting.—4 needles. A long full-sized stocking with heels thickened.

Darning.—Plain and Swiss darning and grafting stockings. Patching and darning garments in any material.

Cutting out.—Any under garment ordinarily required in the families of children attending elementary schools.

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1. The work printed in italics is optional.
2. Garments must be worked in each stage, but not necessarily those specified in this schedule, which are mentioned merely as examples.
3. Girls should fix their own work in the earlier stages, and must do so in the fourth and higher stages.
4. The classes for needlework need not be the same as for the standard work of the Code (Article 28). Scholars should be passed into a higher division, or stage, as soon as ready for it.

Pupil-Teachers (Girls).

In schools to which grants fall due *after 31st March* 1879, pupil-teachers of the first year (or of the second, if previously engaged for five years) will be expected to work well, and to be able to teach all that is required in the first three stages; and to advance a stage in each successive year of their engagement. After the 31st of March 1880, some further special work will be prescribed for pupil-teachers in each year.

N.B.—In connection with this Schedule, *see* 'Plain Needlework in Six Standards,' and 'Plain Knitting and Mending.' Published by Griffith & Farran, St Paul's Churchyard, London.

FOURTH

TABLE of SPECIFIC SUBJECTS of

*	1. Mathematics.	2. English Literature and Language.†	3. Latin.	4. Greek.	5. French.	6. German.	7. Mechanics.
1st stage	Algebra, notation, addition, subtraction. Euclid, book I., prop. 1 to 15 inclusive.	Two hundred lines of poetry, got by heart, with knowledge of meaning and allusions.	Grammar, to the end of regular verbs.	Grammar, to the end of regular verbs.	Grammar, to end of regular verbs. Ten pages of a French vocabulary.	Grammar, to end of regular verbs. Ten pages of a German vocabulary.	General ideas respecting the different states of matter, solid, liquid, and gaseous, with illustrations of compressibility, elasticity, and resistance. Measures of space, time, and velocity.
2d stage	Algebra, to simple equations (*inclusive*). Euclid, book I.	Three hundred lines of poetry, not before brought up, repeated; with knowledge of meaning and allusions, and of the derivations of words. Writing a paraphrase of a passage of poetry from the lines repeated.	Irregular verbs and first rules of syntax. Knowledge of Delectus or other first Latin reading-book. Translation of simple sentences of English (three or four words) into Latin.	Irregular verbs and knowledge of some easy Greek reading-book. Translation of simple sentences (three or four words) into Greek.	Grammar and translation into English of easy narrative sentences. Ten pages of a French conversation-book approved by inspector.	Grammar, and translation into English of easy narrative sentences. Ten pages of a German conversation-book approved by inspector.	General notions of force, and of the conservation of energy. The parallelogram of forces. General notions of gravitation.
3d stage	Algebra, to quadratic equations (*inclusive*). Euclid, books I., II., and III. Elements of mensuration.	Three hundred lines of poetry, not before brought up, repeated; with knowledge of meaning and allusions, and some general knowledge of the history, construction, and etymology of the English language. Writing a letter or statement, the heads of the topics to be given by the inspector.	The Latin Grammar. Cæsar de Bello Gallico, book I. Somewhat longer sentences to be translated from English into Latin.	The Greek Grammar. Xenophon's Anabasis, book I. Somewhat longer sentences to be translated from English into Greek.	Grammar, and knowledge of some easy French book approved by inspector. Translation or conversational sentences into French. Tolerable correctness of pronunciation.	Grammar, and knowledge of some easy German book approved by inspector. Translation of conversational sentences into German. Tolerable correctness of pronunciation.	General notions of the mechanical powers.

* The three stages of such of these subjects as admit of it may be taken in any order.

† *Poems of some length should preferably be selected.* A list of the passages proposed to be learnt in preceding year, and submitted to him by the managers for approval.

It is intended that the instruction of the scholars in the Science subjects in this table shall be given phenomena presented in their own neighbourhood. If these subjects are taught to children by definiwill be worthless as means of education.

It cannot, therefore, be too strongly impressed on teachers, that nothing like learning by rote will be from the scholars as far as possible, in their own language, the ideas they have formed of what they

SCHEDULE.

SECULAR INSTRUCTION. (See ART. 21.)

8. Chemistry.	9. Animal Physiology.	Physics. 10. Light and Heat.	Physics. 11. Magnetism and Electricity.	12. Physical Geography.	13. Botany.	14. Domestic Economy (for Girls).
Elementary and compound matter. Illustrations of combination and decomposition in such bodies as hydrochloric acid, water, oxide of mercury, and rust of iron.	The build of the human body, names and positions of the internal organs.	General notions respecting the formation of shadows, and the reflection of light. The formation of images by a looking-glass. The three modes in which heat may be conveyed from one place to another. Effects of heat; expansion, melting, boiling, and evaporation.	Attraction, repulsion, and polarity, as illustrated by the magnet. Terrestrial magnetism, and the mariner's compass.	The nature of a river or stream, whence it is supplied, and what becomes of it. Evaporation and condensation. Rain, snow, and hail, dew and mist. The atmosphere and its composition. Winds. An explanation of the terms river-basin and watershed. The boundaries of the great river-basins of Scotland.	Characters of the root, stem, leaves, and parts of the flower, illustrated by specimens of common flowering plants.	Food and its preparation. Clothing and materials.
Preparation and properties of the common gases, such as oxygen, hydrogen, nitrogen, and chlorine. The chemical character and constituents of pure air and pure water, and the nature of the impurities sometimes found in both. The air-food of plants.	Circulation and respiration, and the broad structure of the organs concerned.	Refraction of light, appearance of objects under water. Separation of white light into its components by a prism. Explanation of the thermometer. The disappearance of heat in the melting of solids and the boiling of liquids.	Attraction of light bodies by rubbed sealing-wax and glass. Experimental proof that there are two forms of electricity. Attraction and repulsion. Gold-leaf electroscope.	The ocean, its extent and divisions, depth, saltness, and currents. Action of waves. Sea-beaches. The phenomena of the tides.	Structure of wood, bark, and pith. Cells and vessels. Food of plants, and manner in which a plant grows. Functions of the root, leaves, and different parts of the flower.	The dwelling; warming, cleaning, and ventilation. Washing materials and their use.
The properties of carbon as found both in inorganic and organic bodies, with elementary knowledge of the constituents of food. Differences between metallic and non-metallic bodies. Combination by weight and volume. The use of symbols and chemical formulæ.	The organs and function of alimentation. The properties of muscle and nerve. N.B.—*Instruction in this subject should be illustrated by diagrams or models only.*	Rudimentary explanation of the camera obscura, burning glass, magnifying glass, microscope, and telescope. Illustration of the difference of the specific heat of bodies. The causes of cloud, rain, and dew.	Construction of electrophorus, electrical machine, and Leyden jar. Construction of a common battery. Explanation of a thunderstorm. Action of a current on the magnet.	Form and size of the earth, and its motions. Day and night. The seasons of the year; how they depend upon the relative positions of the earth and sun. Moon's dimensions and distance, explanation of her phases. General arrangement of the planetary system.	The comparison of a fern and a moss with a flowering plant. The formation of different kinds of fruits. The structure of a bean and of a grain of wheat or barley. The phenomena of germination.	Rules for health; the management of a sick-room. Cottage income, expenditure, and savings.

any year should be prepared, before Her Majesty's Inspector pays his annual visit at the end of the

mainly by experiment and illustration, and in the case of Physical Geography by observation of the tion and verbal description, instead of by making them exercise their own powers of observation, they

accepted as sufficient for a grant, and that the Examinations by the Inspectors will be directed to elicit have seen.

FIFTH SCHEDULE.

Supplementary Rules.

Rule 1.—In column II. of the Examination Schedule the names of the qualified scholars must be entered class by class, *beginning* with the *lowest* scholar in the *lowest* class.

Rule 2.—The entries in column VIII. must show where one *class* ends and another begins. The number denoting each *class* is to be written only *once;* dots (" ") are to be put for each repetition of it, until the next higher class begins. There must be no intermixture of classes.

Rule 3.—The entries in column IX*b*. will show where one *standard* ends and another begins. The number denoting each *standard* is to be written only once; dots (" ") are to be put for each repetition of it until the next higher standard begins. There must be no intermixture of standards.[1]

Rule 4.—The end of each standard in column IX*b*. *need not* (although, of course, it *may*) coincide with the end of each class in column VIII.[1] Compare the entries opposite to No. 6 who ends a *class*, but not a *standard;* No. 8 who ends a *standard* but not a *class;* No. 16 who ends *both* a class *and* a standard (this is preferable).

Rule 5.—All the scholars must be presented in the classes to which the school registers prove them to belong, unless they fall as "*Exceptions*" under Rule 6.

Rule 6.—The children who, for whatever reason, are presented under a lower standard than that which an examination of the school according to the above rules assigns to their class, must be entered *last* in the Schedule under the title of "*Exceptions*," otherwise they will violate Rule 2 or 3. No child is to be placed among the "*Exceptions*" unless there is some special *excuse* for doing so, such as previous *illness*, &c. *Primâ facie, every*

[1] In the following transcript of part of the Examination Schedule, columns II., VIII., and IX*b*., are filled up, *by way of example*, according to Rules 2 and 3. Of course, the other columns must not, *in practice*, be left blank; and the actual numbers, presented in each class, will generally be much larger.

I.	II	V.	VI.	VII.		VIII.	IX*a*.	IX*b*.
Number.	Name.	Number of Attendances* in the Year.	Age (on last Birthday).	Date of Admission to this School. Year.	Month.	In what class of School; *first* means *highest*.	Under what Standard LAST examined—enter I., II., III., &c. as case may require.	Under what Standard NOW to be examined—enter I., II., III., &c. as case may require.
1	John Duncan					4th		I.
2	Thomas Peters ..					,,		,,
3	Henry Brown					,,		,,
4	Wm. Robertson ..					,,		,,
5	Thomas Davies ..					,,		,,
6	Robert Ferguson .	.....	.....	.....	.....	,,	.....	,,
7	Luke Williams....					3d		,,
8	Simon Hunt.....	.....	.....	.....	.....	,,	.....	,,
9	James Short.....					,,	I.	II.
10	Richard Smart....					,,		,,
11	Samuel Grant					2d		,,
12	John Macleod	.....	.....	.....	.....	,,		,,
13	Henry Pigot.....					,,	II.	III.
14	Silas Wills.....					,,		,,
15	John Miller					,,		,,
16	Peter M'Pherson .	.....	.....	.....	.....	,,	.....	,,
17	Charles Knox					1st	III.	IV.

* *See* Rule 11.

child who is not fit to be examined in its own class has been wrongly placed there for instruction.

RULE 7.—The inspector is directed to refuse to examine children in schools *wherein Rule 2 or 3 is violated.* He will in such cases proceed to inspect the school, and will report to the Department why he has left column III. (*his Report on each scholar*) in the Examination Schedule blank.

RULE 8.—No grant will be paid to a day school in which children are retained after the age of 8, unless one *class—i.e.*, all who are to be examined as members of one class, according to Rule 5—be presented *at least as high* as Standard II.

RULE 9.—A deduction of at least one-tenth will be made from the grant to a day school in which children are retained after the age of 10, unless one *class—i.e.*, all who are to be examined as members of one class, according to Rule 5—be presented *above* Standard II.

RULE 10.—*For the rule how to find the average number of scholars in attendance at a school for any period, see Article* 26 *of the Code.*

RULE 11.—The Class Registers at each meeting of a school *must be marked and finally closed before* the minimum time constituting an attendance (Article 23) *begins.*

If any child, entered in the Register as attending, is withdrawn from school before the time constituting an attendance is complete, its mark for presence should be at once cancelled.

The inspector will inquire whether these rules have been observed (Article 17 *g.*)

RULE 12.—No child's name should be kept on the Admission Register after a fortnight's continuous absence without inquiry from the parents *whether the child has been withdrawn.* The names of children withdrawn (*whether they are so, the answer of their parents will decide*) should be cancelled at once in the Registers, and not included in the returns of *age* and *stay at school;* but the attendances (if any) opposite to such names in the Class Registers must be counted under Rule 10, *suprà*, and the whole number of such names must be counted for the return "left in past year."

APPENDIX.

Showing separately (for 1878) all ARTICLES modified, and all New ARTICLES.

Articles in the Code of 1877 which are modified in the Code of 1878.	New, or modified, Articles in the Code of 1878.
	17. *c.* Footnote:— *In schools erected with the aid of a building grant, the average attendance may not exceed the number of children for whom the plans were approved by the Department.*
17. (*g.*) All returns called for by the Department are duly made;	17. (*g.*) All returns called for by the Department, *or by Parliament*, are duly made;
. . . . .	. . .
17. *i.* Footnote:— *See* Elementary Education Act, 1876, sections 20 and 53. This may include part of the	17. *i.* Footnote. *See* Elementary Education Act, 1876, sections 20 and 53. This may include part of the

Articles in the Code of 1877 which are modified in the Code of 1878.	New, or modified, Articles in the Code of 1878.
salary of an organising teacher, or of a teacher of drill, cooking, or any other special subject (Article 21), employed by the managers of several schools; but not expenditure on Sunday schools or on such items as school treats, clothing, money prizes, or any outlay on the premises beyond the cost of ordinary repairs.	salary of an organising teacher, or of a teacher of *Gaelic*, drill, cooking, or any other special subject employed by the managers of several schools; but not expenditure on Sunday schools or on such items as school treats, clothing, money prizes, or an outlay on the premises beyond the cost of ordinary repairs, *or for other purposes not recognised by the Department as educational. Any income from endowment, if spent according to the terms of the trust, is not affected by this rule.* (N.B.—*See* Minute of 12th July 1877.)
19 C. 2. Footnote:— † This proportion will be raised in 1878 (1st April) to 15, in 1879 to 20, in 1880 to 25, and in 1881 to 30, per cent.	19 C. 2. Footnote:— † This proportion will be raised in 1879 (1st April) to 15, in 1880 to 20, and in 1881 to 25, per cent.
	19 C. 3. Footnote:— *Gaelic may be taught during the ordinary school hours, either by the certificated teacher, or by any person specially employed for the purpose.*
24. Attendance of boys at military drill, under a competent instructor, or of girls at lessons in practical cookery, approved by the inspector, may, in a day school, be counted as school attendance for not more than two hours a week, and 40 hours in the year.	24. Attendance of boys at military drill, under a competent instructor, or of girls at lessons in practical cookery, approved by the inspector, may, in a day school, be counted as school attendance for not more than 40 hours in the year, *and (in the case of drill) two hours a week.*
32. The amount which may be claimed by the managers (Articles 19 to 22) is reduced,—	32. The amount which may be claimed by the managers (Articles 19 to 22) *may be* reduced,—
47. (*c.*) Graduates in Arts or Science of any University of the United Kingdom, who have satisfied an inspector of their practical skill as teachers.	47. (*c.*) Graduates in Arts or Science of any University of the United Kingdom, who, *after a course of training for not less than three months in an aided school, approved by one of the senior inspectors, satisfy such* inspector of their practical skill as teachers.
48. Teachers, or graduates, attending the examination may at their option take the papers of the first or second year's students (Article 102); but graduates are not required to be examined in any of the subjects (Article 45) in which they were examined on obtaining a degree.	48. Teachers attending the examination may at their option take the papers of the first or second year's students (Article 102). 48. (*a.*) *Graduates (Article 47 c.) are not required to take any papers save those on School Management, which will include questions to test their knowledge of elementary subjects*[1] *and the methods of teaching them.*
54. (*a.*) Candidates who are placed by examination in the first division of the second year (Article 49), receive certificates of the second class, which can be raised to the first class by good service only.	54. Candidates who are placed by examination in the first division of the second year (Article 49), *and graduates examined under Article* 47 (*c.*), receive certificates of the second class, which can be raised to the first class by good service only.
60. Pupil-teachers who have completed their engagement with credit, and who have passed satisfactorily either the examination for the close of their fifth year.	60. Pupil-teachers who have completed their engagement with credit, and who have passed satisfactorily either the examination for the close of their *engagement.*
. . . . .	. . . . .
69. Certificates may, at any time, be recalled, suspended, or reduced, if the certifi-	69. *A certificate* may, at any time, be recalled, suspended, or reduced if the certificate

[1] *See Article* 28 *and First Schedule (columns* 4-7.

Articles in the Code of 1877 which are modified in the Code of 1878.	New, or modified, Articles in the Code of 1878.
cate or report under Articles 67 and 68 is not satisfactory.	or report under Articles 67 and 68 is not satisfactory; *but not until the Department has, through the managers, given the teacher an opportunity of explanation.* (*N.B.*—Addition made to show the practice of the Department.)
70. (*b.*) *That the pupil-teachers* be not less than 13 years (completed) of age at the date of their engagement.	70. (*b.*) *That the pupil-teachers* be not less than 14 years (completed) of age at the date of their engagement.
70. (*g.*) That not more than *four* pupil-teachers are engaged in the school for every certificated teacher serving in it.*	70. (*g.*) That not more than *three* pupil-teachers are engaged in the school for every certificated teacher serving in it. (*h.*) *When the average attendance exceeds 220, a second adult certificated or assistant (Article 79) teacher will be required.* (*i.*) *Two* stipendiary monitors *will be allowed*— 1. *In place of a* fourth *pupil-teacher required by Article 32 (c.); or* 2. *If less than four pupil-teachers are required by Article 32 (c.), to fill, for two years, the place of* one *of them.* (*k.*) Stipendiary monitors *must*— 1. *Be not less than 12 years of age at the date of their appointment;* 2. *Be recommended by the inspector at his annual visit (Article 11), after then passing the examination in reading, writing, and arithmetic for Standard IV., V., or VI.;* 3. *Pass the examination for the next higher standard at the end of their first year;* 4. *Be paid a stipend fixed by the managers;* 5. *Assist for not more than three hours each day in the school, receiving during the rest of the school hours special instruction either by themselves or in one of the higher classes of the school.*
73. Vacancies in the office of pupil-teacher which occur in the course of any year (Article 13) must not be filled up until after the next examination by the inspector.	73. Vacancies in the office of pupil-teacher, *or stipendiary monitor*, which occur in the course of any year (Article 13) must not be filled up until after the next examination by the inspector.
74. The candidate or candidates for such vacancies must be engaged in the meantime by the week only as monitors.	74. The candidate or candidates for such vacancies must be engaged in the meantime by the week only as *temporary monitors.*
. . . . .	. . . . .
86. (*b.*) is reported by the proper department in each case to have completed a like period of good service as an elementary teacher in the Army or Royal Navy, or (within Great Britain) in Poor Law Schools, Certified Industrial Schools, or Certified Reformatories.	86 (*b.*) is reported by the proper department in each case to have completed a like period of good service as an elementary teacher in the Army or Royal Navy, or (within Great Britain) in Poor Law Schools, Certified Industrial *and Day Industrial* Schools, or Certified Reformatories.
94. The successful candidates are arranged in two classes in order of merit.	94. The successful candidates are arranged in *three* classes in order of merit. 94 (*a.*) *A place in the third class qualifies for employment as an assistant teacher (Articles 79); but not for admission to a training college, or for a provisional certificate (Article 60).*
100. An examination of the students is held	100. An examination of the students is held

* *After the 31st of March* 1878 not more than *three* pupil-teachers will be allowed in any school in respect of each certificated teacher serving in it; the age for admission will be 14, and the examination that now fixed for the end of the first year (Schedule I.); the engagement will be for four years.
When the average attendance exceeds 220, a second adult certificated or assistant (Article 79) teacher will be required.
Two *stipendiary monitors* will be allowed either in place of a fourth pupil-teacher (Article 32 *c.*), or to fill for not more than two years a vacancy in the staff of pupil-teachers in any school.
Stipendiary monitors will be not less than 12 years of age; will pass on admission the examination in reading, writing, and arithmetic for Standard IV., and that for Standard V. at the end of the first year; they will be paid a fixed stipend by the managers, and will assist for not more than three hours each day in the school, receiving during the rest of the school hours special instruction either by themselves or in one of the higher classes of the school.
This arrangement, if the managers wish it, may be adopted in any school whose year (Article 13) ends before the above-mentioned date.

Articles in the Code of 1877 which are modified in the Code of 1878.	New, or modified, Articles in the Code of 1878.
in December at the several colleges. This examination will commence in 1877, on Monday the 17th of December, at 3 p.m.	in December at the several colleges. This examination will commence in 1878, on Monday the 16th of December, at 3 p.m.
102. (*b.*) Queen's scholars (Article 96) may, with the consent of the authorities of their training college, attend during the *winter session* of each year of their instruction in such college, one or two (but not more) of the classes in a Scotch University, prescribed for graduation in Arts or Science. If they attend two such classes during the session they may, during the same time, reckon two hours of attendance per diem at the training college as equivalent to regular attendance.	102. (*b.*) Queen's scholars (Article 96) may, with the consent of the authorities of their training college, attend during the *winter session* of each year of their instruction in such college, *one or more* of the classes in a Scotch University, prescribed for graduation in Arts or Science. If they attend *any of these* classes *the authorities of the training college may, during the university session, dispense with their attendance at college, each day, for such time as they may deem necessary.* 102 (*d.*) *Those candidates who at the examination (Article 91) for admission pass with credit in certain subjects (Latin, Greek, and Mathematics) will be specially indicated in the class list (Article 94); and the university fees (b.) of such of them as become Queen's scholars may be treated as part of the College expenditure under Article 89.*
118. (2.) Pensions will be granted to those teachers only who . . . . are in need and deserving of such assistance.	118. (2) Pensions will be granted to those teachers only who . . . . are deserving of such assistance.
118. (7.) The pension will be paid yearly, on certificates proving identity, good behaviour, and continued need.	118. (7.) The pension will be paid yearly, on certificates proving identity and good behaviour.
	122. *The changes in this Code will not affect annual grants falling due before the 1st of April* 1878.
FIRST SCHEDULE.	**FIRST SCHEDULE.**
See Footnote ‡ to 70. (*g.*) ‡ *After the* 31*st of March* 1878 not more than *three* pupil-teachers will be allowed in any school in respect of each certificated teacher serving in it; the age for admission will be 14, and the examination that now fixed for the end of the first year (Schedule I.); the engagement will be for four years.	*N.B.*—Pupil-teachers are now to be engaged for four years instead of five, and must pass on admission the examination formerly fixed for the end of the first year. The Schedule has been altered accordingly.
Section 9.—Additional Subject.	Section 8.—Teaching.
	Footnote :— *At the examination for admission to training colleges (Article 91) marks will be given to candidates who have been pupil-teachers for their practical skill in teaching.*
	Section 9.—Additional Subject.
3. (10.) Physical Geography. 5. All male pupil-teachers admitted after 1st September 1873 must choose *one* of the four languages specified above, and will be examined at the end of their 3d, 4th, and 5th years.	3. (10.) *Physiography.* 5. All male pupil-teachers must choose *one* of the four languages specified above, and will be examined at the end of their *2d*, 3d, and *4th* years.
. . . . .	. . . . .
SECOND SCHEDULE.	**SECOND SCHEDULE.**
FORM OF MEMORANDUM OF AGREEMENT.	FORM OF MEMORANDUM OF AGREEMENT.
1.	1. . . . .
but so that the pupil-teacher shall not be obliged to serve therein more than six hours	but so that the pupil-teacher shall not serve therein *less than three or* more than six hours

Articles in the Code of 1877 which are modified in the Code of 1878.	New, or modified, Articles in the Code of 1878.
upon any one day, nor more than 30 hours in any one week.	upon any one day, nor more than 30 hours in any one week.
. . . .	. . . . .
	(N.B.—*See* Minute of 12th July 1877.)
2. Marginal note.	2. Marginal note.
9. The term must be for full five years	9. The term must be for *four* full years
. . . . .	. . . . .
5.	5. . . . .
such special instruction shall be in the subjects in which the pupil-teacher is next to be examined pursuant to the said Articles.	such special *instruction, and any instruction in secular subjects given to the pupil-teacher during school hours*, shall be in the subjects in which the pupil-teacher is next to be examined pursuant to the said Articles.

THIRD SCHEDULE.

NEEDLEWORK.

INFANTS' DEPARTMENT.

1st Standard. 3 to 5 (probable age).

Position drill, hemming, simple, on stripe, beginning with black cotton, rising to red, and going on to blue.

Hemming, simple and counter. To show any garment which can be made entirely by these—*e.g.*, a child's common pinafore.

2d Standard. 5 to 7 (probable age).

Threading needles; hemming; seaming; felling; pleating. Any garment which can be entirely completed with the above stitches only—*e g.*, a child's plain shift.

Knitting.—2 needles. A strip 3 inches by 18 inches with cotton.

Every infant school should have two standards. The 1st Standard graded in four divisions—viz., position drill, stripe, threading, garments.

GIRLS' DEPARTMENT.

1st Standard. Composed strictly of children who have *not* passed the two standards in infants' department.

Hemming and *Fixing.*—Stripe in coloured cottons as in infants' department.

Hemming, simple and counter, with white cotton. Any garment which can be entirely completed by the above—*e.g.*, a child's simple shift and night-gown or pinafore.

Knitting.—2 needles. A strip as above.

This standard should be sub-divided into two divisions—viz., stripe, garments.

2d Standard. Composed strictly of those children who have *not* passed the 2d Standard in infants' department.

Hemming; seaming; felling; pleating. Fixing all the above. Any garment which can be entirely made with the above stitches only—*e.g.*, a plain shift pleated into band.

Knitting.—2 needles. Plain and purled rows alternately. A strip as above, 4 needles. Wristlets or Muffatees.

3d Standard. The junction of the two departments, girls and infants.

Hemming; seaming; felling; pleating;

THIRD SCHEDULE.

NEEDLEWORK.

This Schedule has been entirely recast. *See* page 420.

Articles in the Code of 1877 which are modified in the Code of 1878.	New, or modified, Articles in the Code of 1878.

stitching; sewing on strings. Fixing the above. Any garment which can be entirely finished by the above stitches only—*e.g.*, a shift pleated into stitched band with strings to tie up the sleeves on the shoulders.

Herring-boning.—A flannel garment to show this stitch—*e.g.*, a petticoat.

Knitting.—4 needles. Plain and purled alternately—*e.g.*, socks.

Darning and *Simple Marking.*—On coarse material.

4th Standard.

Hemming; seaming; felling; stitching; gathering; stroking; setting in; marking on a finer material; button-holing; sewing on buttons. Fixing all the above. Any garment which can be fully finished by all the above stitches only—*e.g.*, a plain night-shirt.

Herring-boning.—Any garment which will show this stitch—*e.g.*, a baby's flannel square.

Cutting out.—Any plain garment such as the children can make up to this Standard.

Plain Darning and *Mending.*—Stockings; garments; patching garments.

Knitting.—4 needles—*e g.*, a full sized youth's sock with at least three decreasings in the leg.

5th Standard.

Hemming; seaming; felling; stitching; button-holing; sewing on buttons; gathering; stroking; setting in gathers; marking; a tuck run; whipping; setting on frills. Fixing the above. Any garment which can be completely finished by the above stitches—*e.g.*, a plain night-dress.

Herring-boning.—Any garment which will show this stitch—*e.g.*, a baby's night-flannel.

Knitting.—4 needles. A full sized boy's "knickerbocker" stocking.

Darning.—Plain and Swiss darning; stockings. Patching and darning garments in calico and flannel.

Cutting out.—Any garment such as the children can make up to this Standard.

6th Standard.

Hemming; seaming; felling; stitching; sewing on strings; button-holing; sewing on buttons; gathering; stroking; setting in; marking; a tuck run; whipping; setting on frill; knotting; feather stitch. Fixing all the above.

Herring-boning.—Any garment which will show this stitch and feather stitch—*e.g.*, a baby's head shawl with one corner rounded.

Knitting.—4 needles. A long full sized stocking with heels thickened.

Darning.—Plain and Swiss darning, and grafting stockings. Patching and darning garments in calico, flannel, and linen.

Cutting out.—Every kind of ordinary garment required in a large family.

N.B.—In connection with this Schedule, *see* 'Plain Needlework in Six Standards,' and 'Plain Knitting and Mending.' Published by Griffith and Farran, St Paul's Churchyard, London.

Articles in the Code of 1877 which are modified in the Code of 1878.	New, or modified, Articles in the Code of 1878.
FOURTH SCHEDULE.	FOURTH SCHEDULE.
TABLE OF SPECIFIC SUBJECTS OF SECULAR INSTRUCTION.	TABLE OF SPECIFIC SUBJECTS OF SECULAR INSTRUCTION.
	Footnote:— *The three stages of such of these subjects as admit of it may be taken in any order.*
Section 2.—English Literature and Language.	Section 2.—English Literature and Language.
1st Stage.	1st Stage.
Two hundred lines of poetry, got by heart, with knowledge of meaning and allusions. Writing a paraphrase of an easy prose passage.	Two hundred lines of poetry, got by heart, with knowledge of meaning and allusions.
2d Stage.	2d Stage.
Writing a paraphrase of a passage of poetry.	Writing a paraphrase of a passage of poetry *from the lines repeated.*

(*d.*) CIRCULAR No. 3.—TIME TABLES.

SCOTCH EDUCATION DEPARTMENT,
30*th June* 1873.

SIR,—

1. I am directed to point out to you that before approving a Time Table under the Minute of the 23d of June 1873, you must ascertain that it conforms to Article 6 of the Scotch Code (1873), which embodies Section 68 of the Education Act of 1872. This is all that is essential in order that you should affix your signature.

2. But in advising managers as to the arrangements shown on a Time Table for the distribution of work during the hours of instruction in secular subjects, you will inform them—

(*a.*) That payment of grants to a school depends upon the fulfilment of Article 23 of the New Code.

(*b.*) That payment of grants for special subjects depends upon the fulfilment of Article 21.

(*c.*) That the use of ill-adjusted Time Tables is one of the faults of instruction, for which the grant to a school may be reduced under Article 32 (*b.*)

(*d.*) That the two hours of secular instruction, required by Article 23 of the Code, must be the same for the whole school or department; and—

(*e.*) That any time allowed for recreation during the meeting of a school, may not exceed *half an hour* for infants under 7, or *a quarter of an hour* for the older scholars.

3. The Inspectors ought not to interfere with the responsibility of managers for the details of school work. The efficiency of their arrangements will be tested by the results produced at the annual examination of their school; but you can point out any serious objection to a Time Table which is presented to you for signature, leaving the managers to decide whether they consider an alteration necessary.

4. If the Time Table does not show the classes and subjects intrusted to the pupil-teachers, and the time given by the principal teacher, during school hours, to their technical instruction in the art of teaching, these particulars ought to be entered in the log-book; and inquiry should be made, at the time of your visit, as to how far the arrangements so recorded are carried out in the daily work of the school.

5. You may be asked whether, and, if so, under what circumstances the managers of a school may allow a Time Table which has been approved by an Inspector to be departed from in the daily work of the school.

6. So far as a Time Table sets forth, as required by Section 68 of the Education Act, the time or times to be devoted to instruction in *religious subjects*, no change may be made without the express sanction of the Inspector. This sanction ought not to be given, in the course of a school year, except upon formal application from the managers, nor unless strong grounds for the change are shown. The parents of scholars attending a school ought to know for certain at what time or times they may withdraw their children, if they wish to do so. Any neglect of this division of the Time Table will entail a forfeiture of grants,—the loss will fall upon the managers, and they must, therefore, see carefully and constantly to this point.

7. So far as the distribution of the time devoted to *secular instruction* is concerned, the case is different; as the approval by the Department required under the Act does not apply to such distribution of time. A Time Table, however, for all subjects taught, is necessary to secure order and regularity in the daily work of a school, and when once settled ought to be adhered to. It otherwise ceases to be of any use for the information of the parents, or to be a guide to the Inspector in forming his judgment of a teacher, or in examining a school.

8. The managers should therefore arrange with the Inspector at his yearly visit what the Time Table for the ensuing year is to be; if they allow it to be altered permanently during the school year, a special note of the change allowed should be made by the correspondent in the log-book; and a copy of the Table, as corrected, ought to be at once put up in the school.

9. Occasional deviations from the Table may be allowed without so formal a record, but they also should be noted by the teacher in the log-book; and if frequently resorted to without special reason they must be regarded as a proof of the teacher's inefficiency, and may cause the grant to the school to be reduced.

10. You will therefore read the 6th paragraph of the Minute as referring to the Time Table, so far as it has been approved under Section 68 of the Education Act; but so far as the hours of secular instruction are concerned, you will note in the log-book, for the information of the managers, every case in which you find a school not being taught according to the ordinary Time Table, unless there is a record in the log-book of the reason why the order of instruction set forth in such Table has not been observed.

11. The Time Table, when it has been signed by an Inspector, must be regarded as part of the property of a school. It has to be submitted to the Inspector by the managers, and may not be taken away by a teacher on leaving their service.—I have the honour to be, Sir, your obedient Servant,

F. R. SANDFORD.

(*a*) CIRCULAR No. 15.—HALF-TIME SCHOLARS.

SCOTCH EDUCATION DEPARTMENT,
WHITEHALL, LONDON, S.W.,
8th April 1874.

SIR,—

1. My Lords have been asked whether Sections 69 to 73 of the Education Act (Scotland), 1872, override the Factory and other Half-time Acts; and whether school boards are justified in requiring children now working as Half-timers to attend school all day, and leave off work altogether.

2. You are aware that this Department has no power to answer such questions authoritatively; but my Lords desire me to address the following observations to you, in case you are consulted by persons interested in the subject. You will, of course, be careful in replying to such questions, or any others affecting the administration of the Act, to state that your answers must be regarded as a mere expression of your private opinion.

3. You will bear in mind that article 17 (*a*.) of the Scotch Code provides that no grant shall be made to a school if any child is refused admission on other than reasonable grounds, and that Article 20 (*a*.) offers grants on special conditions, framed to meet the case of children attending school under any Half-time Act. My Lords, under the first of these Articles, would make no grant on behalf of a school which refused to admit scholars on the ground that they were Half-timers.

4. They have further, in the Circular (No. 12) of the 16th of February 1874, suggested that "a school board may be disposed to accept regular half-time attendance at a school, under the 20th Article of the Scotch Code, as sufficient to stay proceedings against a parent or employer;" but they cannot interfere with the discretion in the matter which the Act of 1872 leaves in the hands of school boards.

5. In the absence of any express provision to that effect, My Lords presume that it was not the intention of the Legislature that the Act of 1872 should override the Factory Acts; nor, unless the case had occurred, would they have thought it likely that a Board which found a child going regularly to school and to work, under a Half-time Act, would threaten proceedings against the parent under Section 70 of the Act of 1872, which proceedings must be taken on the ground that he is "grossly and without reasonable excuse, failing to discharge the duty of providing elementary education for his child or children." In like manner, they would imagine that an employer would not be held by a school board "to be liable to be proceeded against" (under Section 72) if a child in his service were at the same time receiving regular instruction at school.

6. But these are matters which, as I have said, must be left to the School Boards, who, my Lords doubt not, will, when their attention has been called to the necessity of proceeding upon some one uniform system, exercise a judicious discretion in dealing with individual cases under the compulsory powers intrusted to them by the Act of 1872.—I am, Sir, your obedient Servant,

F. R. SANDFORD.

(*f.*) CIRCULAR No. 16.—APPLICATION FOR INSPECTION.

SCOTCH EDUCATION DEPARTMENT,
30th June 1874.

SIR,—In several cases which have recently come before their Lordships, they find school boards stating that they were not aware that it was necessary for them to apply to this Department for the inspection of schools under their management, with a view to the award of annual grants. The Boards, looking to the general right of inspection given by section 66 of the Act of 1872, have assumed that their schools would be visited, and that grants would follow, as a matter of course.

I need not remind you that, under the Code (Articles 11 and 14), special application must be made for aid in every case; and that, until such application is made, the Department and its officers have no means of knowing either what schools, hitherto unaided, have passed to the management of school boards, or what teachers are employed in them, or what provision may have to be made in the estimates for meeting the grants to be claimed on behalf of such schools.

But, to prevent any loss to school boards from their failure to comply with one of the ordinary rules of administration, the observance of which is absolutely essential for the proper management of the business of the Department, I am directed to state that, if, when you visit any district, you are asked to inspect and report upon a public school, for which the Board of the district have not made the necessary application, my Lords hope that you will be able to comply with such request. You will examine the school (and report upon it in the usual forms) under protest, after informing the Board that they must at once write to the Department in accordance with the requirements of Article 14 of the Scotch Code, a copy of which was duly sent to them from this office.—I have the honour to be, Sir, your obedient Servant,

F. R. SANDFORD.

(*g.*) CIRCULAR No. 17.—MUSIC.

SCOTCH EDUCATION DEPARTMENT,
WHITEHALL, *6th July* 1874.

SIR,—My Lords have consulted Mr Hullah, the Inspector of Music, as to the manner in which the results of musical instruction in elementary schools ought to be tested, before grants are paid under Article 19 A. (2) of the Scotch Code.

Mr Hullah recommends that in all schools the Inspector should, in the first place, ascertain that singing forms part of the regular school work, what time is given to it, and on what system it is taught.

He should then, in the case of infant schools, call for a list of not less than six simple secular songs, known (by ear) to the scholars; he should select one or two of these, to be sung by the children, and should satisfy himself that the notes are sung fairly in tune, and the words plainly articulated.

In schools for older children singing "by ear" may also, for the present, be passed as satisfying the Code.

The Inspector should, in such schools, call for a list of (say) twelve songs of a secular character, known to the scholars, who should sing at least two of them. Not less than two-thirds of the scholars present should join in this exercise, and the Inspector should be satisfied that the notes are sung fairly in tune, and the words plainly and correctly articulated.

This standard of examination will hereafter be considerably raised; but my Lords think that it may be accepted for the present, and till experience has shown what results may fairly be required from elementary schools in which the children receive systematic instruction in vocal music.

Special questions on the subject have been inserted in your form of annual report (X.); and notice of these requirements is given (in form VIII.) to the managers. Till they are more generally known you are at liberty to recommend (on page 8 of Form X.) payment of the music grant to those schools in which you find that the scholars are taught to sing, and *that they can do so fairly*, though they may not have learned the prescribed number of songs.—I have the honour to be, Sir, your obedient Servant,

F. R. SANDFORD.

(*h.*) CIRCULAR No. 30.—CODE: ARTICLES 47 (*c.*), 59 (*d.*)

SCOTCH EDUCATION DEPARTMENT,
14*th June* 1878.

SIR,—

1. Some misapprehension appears to exist with regard to the provisions of Articles 47 (*c.*) and 59 (*d.*) of the Scotch Code (1878), and the position of graduates who desire to attend the Christmas examination.

2. You will observe that under Article 47 (*c.*), it is necessary that every graduate, before admission to examination for a certificate, should have had three months' *training* in an aided school, approved by one of the senior inspectors. Such approval should not be given unless the school is in charge of a certificated teacher of some standing, with a sufficient staff of pupil-teachers or other assistants acting under him; so that the candidate may have full opportunity of studying the practical details of school management under competent guidance.

3. This training must be independent of service in a school in which the candidate is employed temporarily as principal teacher, and may bring grants to the school in that capacity under Article 59 (*d.*) In such a case the period of training under a certificated teacher must have been passed at some time before the candidate enters on the temporary charge of the school under this Article.

4. The character of the examination required in the case of graduates under Article 48 (*a.*) necessitates a strict and careful investigation of their practical skill as teachers. It is for this reason that the report on this point is required to be made by a senior inspector; and for your own guidance, as well as to enable you to correct any misapprehensions on the part of candidates, my Lords have thought it well to explain the scope of the Articles referred to in this letter.

5. When one of these graduate-candidates teaches a class in the presence of an Inspector, with a view to obtaining the favourable report (Article 47 c.) required for his admission to examination, the Inspector must see that the lessons given before him are such as thoroughly to test the candidate's knowledge of some of the subjects specified in Article 28 of the Code, as well as his practical skill as a teacher of these subjects. A lesson on arithmetic should invariably be given; and the candidate must also satisfy the Inspector as to his proficiency in the art of reading before he can be passed as qualified for examination.—I have the honour to be, Sir, your obedient Servant,

F. R. SANDFORD.

(i.) CIRCULAR No. 31.—CODE: ARTICLE 19 D. (*a.*) and (*b.*)

SCOTCH EDUCATION DEPARTMENT,
26th June 1878.

SIR,—

1. My Lords observe that considerable misapprehension prevails amongst school boards, and other school managers, with regard to the provisions of Article 19 D. (*a.*) and (*b.*), of the Code (1878), and that in consequence the benefit of these provisions is not received in many districts, the special circumstances of which they are designed to meet.

2. Under Article 19 D., a payment of £10 (or £15) may be made (in pursuance of Sections 19 and 53 of the Elementary Education Act, 1876) to an efficient school which satisfies the usual requirements of the Code in regard to the teaching staff and the premises. The principal condition of payment is the amount of population within a certain distance[1] which, while large enough to call for the establishment of a properly equipped school, may still be so small as to render the keeping up of that school a serious burden on the locality. In the case of schools of the size that will be generally found in districts in which this Article comes into play, special provision is made by the Code (Article 60) for the recognition of teachers who have had no training save that which they have received as pupil-teachers: if, however, a fully certificated teacher is deemed necessary in such a school, a schoolmistress will be the most suitable person to appoint.

3. Clauses (*a.*) and (*b.*) of the Article relate to circumstances of a different kind, affecting many districts of Scotland where, outside of a centre of population for which a school is required, there are scattered families for whose children it is desirable that special educational provisions should be made. It is with a view to assist school boards in meeting these cases that my Lords have inserted sub-sections (*a.*) and (*b.*) in Article 19 D. of the Code.

Under it, a school board may supply the wants of outlying families without providing either a schoolhouse or a certificated teacher. It is only necessary that the person employed to give instruction be approved by the Inspector of the district, and that he work under the supervision of the certificated teacher of some aided school. He may give the instruction at the homes of the children or at some other convenient place; and looking

[1] Two miles by the nearest *road*, by which is meant any tolerable mode of public access by land.

to the fact that he may have to pass from one household or group of households to another, at considerable distances apart, and that he may thus be unable to give continuous instruction for any long period to each child, my Lords have introduced the provision which, dispensing with the usual number of attendances required by the Code for examinatiqn, allows a child to be presented to the Inspector, who has received only sixty days' instruction throughout the year. Whilst there is nothing to prevent a small group of children from being taught at some one place, instead of each family being taught in their own home, it is to be observed that if any one group amounts to fifteen, the benefit of the provision will be lost. In such a case, a teacher and schoolroom fulfilling the usual conditions should be provided; and the grant of £10 (or £15) under Article 19 D. would generally be claimable.

On the other hand, if fifteen or more children are taught (Article 19 D. (*a*.)), not in one, but in several groups, then a further grant of £10 may be allowed under Article 19 D. (*b*.) But it must be observed that, under this sub-section, the teacher is supposed to pass from one house or home to another, and to give instruction, at more than one place, to children whom it is impossible to collect at a single centre.

If a school board, in a large district, employs more than one person to give instruction under a certificated teacher, in terms of this Article, then a separate grant of £10 may be allowed on account of each of the teachers so employed, provided that he presents in the central school fifteen scholars whom it was impossible to gather together for instruction at one place, and whom he has accordingly taught at separate places, or in their own homes, throughout the year.—I am, Sir, your obedient Servant,

F. R. SANDFORD.

(*j*.) CIRCULAR No. 32.—SCHOOL SUPPLY.

SCOTCH EDUCATION DEPARTMENT,
WHITEHALL, S.W., 31*st August* 1878.

SIR,—In consequence of the expiry, on the 6th of August, of the Board of Education Continuance Act (1877), the duties of that Board have, under Section 3 (6) of the Education (Scotland) Act of 1872, devolved upon this Department.

Some of the questions which will henceforth have to be dealt with by the Department have not previously come directly under their Lordship's cognizance. Many of the forms used in connection with these questions will have to be altered or recast. It will probably, therefore, be most convenient, for all concerned, that the consideration of such cases as are not urgently pressing should be postponed until the Heads of the Department return to town in the course of the autumn.

This will apply also to questions arising under the Education Act of this year, which does not come into operation until the 1st of October. But there need be no delay in prosecuting any applications for Building Grants which are still in progress, as these have all along been dealt with by the Department.

The arrangements for the provision of school accommodation are, for

the most part, complete; and the questions under this head, beyond the few cases in which delay has been caused by special circumstances, will probably be confined to the provision which may be required for any increase of population, or the repair and improvement of schools which time may render necessary.

In dealing with applications for transfers—for loans under Section 45 of the Education Act of 1872—and generally with all questions affecting school supply—it will be necessary that my Lords should be in possession of the facts as to the requirements of each district, and the extent of the accommodation already provided, or in course of being provided, to meet these requirements. I am, therefore, to request that your Board will be good enough to fill up and return to this Department, in the course of the next two months, one of the enclosed forms; which, if carefully completed, will furnish the information required.

Their Lordships desire to take this opportunity, when the relations between the Department and the school boards in Scotland are becoming more close than before, of pointing out that while, in addition to the administration of the Parliamentary Grant, various other important duties are laid upon this Department under the Education Acts of 1872 and 1878, it is, nevertheless, upon the school board in each locality that the duty, as well as the responsibility, of administrating these Acts in their own district mainly rests. My Lords, while anxious to aid and co-operate with the school boards to the utmost of their power, think it most expedient, and, at the same time, most in accordance with the intention of the Education Acts and with the powers vested in school boards, that they should, as a rule, decline to interfere, either by advice, or by the expression of opinions which would have no legal force, in questions which fall properly within the province of the school boards themselves, and in which anything like interference on the part of the Department might probably be misunderstood, and only lead to the complication of such difficulties as may unfortunately exist, or hereafter spring up, in any district.—I have the honour to be, Sir, your obedient Servant,

F. R. SANDFORD.

(*k.*) CIRCULAR No. 132.—EXAMINATIONS: ABSENTEEISM.

EDUCATION DEPARTMENT, WHITEHALL,
LONDON, S.W., *30th January* 1877.

SIR,—I am directed to point out to you that Articles 19 B. (5.) and 19 C. (4.) require all children above 7 years of age, who are qualified by attendance under Article 19 B. or 20, and who are not *absent from the school* upon reasonable excuse, to be presented for examination on the day of the Inspector's visit. No child, who is able to be present, may be withheld from examination on account of its ignorance or want of capacity. Article 29 meets such cases by allowing a scholar to be presented a second time in the same Standard.

You will see that under Articles 19 C. (4.) and (6.)[1] and Article 21 (c.) the withholding of a small number of children may improperly affect the amount of the grant. The prohibition to withhold was introduced to pre-

[1] 19 C. (2.) of the Scotch Code.

vent the grant being obtained or increased, by keeping scholars away from the examination, instead of by improving the order and instruction of the school.

With regard to the excuses for absence, H.M. Inspector will, if he considers them obviously unreasonable and insufficient, treat an absentee child as if it had been presented and had failed. On the other hand, he will make a special report on any cases in which he has reason to believe that scholars have been kept away, on the day of inspection, by their parents, or under other influences, with a view to discredit or injure the school or the teacher.

I am to add that in some districts in England, school boards, with the view of securing the presence of qualified scholars, and the grants that may be earned by their examination, make attendance on the day of the Inspector's visit compulsory under their bye-laws. With the same view the managers of voluntary schools, in some instances, return part of the school fees at the end of the year to the scholars who attend for the purpose of being examined. The desire to obtain Labour Certificates under the Education Act of 1876 will probably increase the attendance at every school on the day of inspection; while the co-operation of all teachers, who have the interest of their school at heart, may be relied upon as helping in the same direction. It is not a good sign of a school when there is a large amount of absenteeism on the day in question, even on the part of those who have permanently left the school, but are qualified for examination and grants.

You will consider these instructions as superseding all previous instructions upon this point.—I have the honour to be, Sir, your obedient Servant,

F. R. SANDFORD.

(*l.*) MINUTE OF THE SCOTCH EDUCATION DEPARTMENT AS TO APPROVAL OF TIME TABLES.

(*Presented to both Houses of Parliament by command of Her Majesty.*)

At the Council Chamber, Whitehall, the 23d day of June 1873. By the Lords of the Committee of Her Majesty's Most Honourable Privy Council on Education in Scotland.

Read:—

Section 68 of the Education (Scotland) Act, 1872, and Articles 6, 12, 21, and 23[1] of the Scotch Code, 1873.

[1] Article 6. In every school, or department of a school, in respect of which grants are made, the following regulations must be strictly observed:—

a. "The school shall be open to children of all denominations, and any child may be withdrawn by his parents from any instruction in religious subjects, and from any religious observance in any such school; and no child shall in any such school be placed at any disadvantage with respect to the secular instruction given therein by reason of the denomination to which such child or his parents belong, or by reason of his being withdrawn from any instruction in religious subjects."

b. "The time or times during which any religious observance is practised or instruction in religious subjects is given at any meeting of the school

Resolved:—

1. That the Time Table of every public school and other school subject to inspection shall be submitted to the Inspector of the district, at his first visit to the school after the 31st of August 1873.

2. That the Inspector shall enter on every Time Table which satisfies the prescribed conditions, "approved on behalf of the Education Department as fulfilling the requirements of Section 68 of the Education Act, 1872," with his signature and the date of his visit.

3. That the Inspector may approve any Time Table which, while conforming to Section 68 of the Education Act, in respect of the time or times appointed for religious observances or instruction, sets apart for instruction in secular subjects at least two consecutive hours at each morning and afternoon meeting, and one hour and a half at each evening meeting of the school.

4. That the Inspector shall not express any opinion as to the time or times appointed for religious observances or instruction, or as to the nature of such instruction, but shall confine himself to seeing that the prescribed amount of time is secured for secular instruction.

5. That before signing the Time Table the Inspector shall satisfy himself—

(1.) That the Time Table is printed, or written, in distinct characters, and that sufficient copies of it are provided to be put up in every schoolroom.

(2.) That, if the school premises admit of it, the children withdrawn by their parents from religious observances or instruction receive, by themselves, instruction in secular subjects during the time or times set apart for religious instruction or observances.

for elementary instruction shall be either at the beginning or at the end, or at the beginning and at the end, of such meeting, and shall be specified in a table approved of by the Scotch Education Department." (Education Act, Sect. 68.) This Time Table is to be submitted to the Inspector for approval, on behalf of the Department, at the time of his annual visit (Article 11).

c. The education given must consist chiefly of elementary instruction (Article 28).

d. The ordinary payments in respect of the instruction, from each child, must not exceed ninepence a week.

Article 12. An Inspector may visit any public school, or other school subject to inspection, at any other time without notice.

Article 21. If the Time Table of the school, in use throughout the year, has provided for one or more specific subjects of secular instruction according to the table in Schedule IV.—

a. A grant of 4s. per subject may be made for every day scholar presented in Standards IV.-VI. (Article 28) who passes a satisfactory examination in not more than two of such subjects.

b. Any scholar who has previously passed in Standard VI. may be presented for examination in any *three* of such specific subjects.

c. The amount claimed under this Article is not taken into account in making any reduction under Article 32 (*a.*) 2.

d. No grant may be claimed under this Article on account of any scholar who has been examined, in the same subject, within the preceding year, by the Department of Science and Art.

Article 23. Attendance at a morning or afternoon meeting may not be reckoned for any scholar who has been under instruction in secular subjects less than two hours, nor attendance at an evening meeting for any scholar who has been under similar instruction less than one hour and a half.

6. That the Inspector shall report to the Scotch Education Department if at any visit which he pays to a school without notice, he finds that the work of the school is not being carried on according to the approved Time Table, or that the Time Table itself is not exhibited in every schoolroom.

7. That if any five parents or guardians of scholars for the time being attending a school make complaint in writing to the Department that a Time Table, approved by the Inspector, is not in accordance with this Minute, or that the work of the school is not carried on according to the approved Time Table, the Department, on receiving such complaint, shall make such inquiry and order in the matter as they may think fit.

8. That copies of this Minute be forwarded, for their information and guidance, to Her Majesty's Inspectors of Schools.

(*m.*) GENERAL ORDER REGULATING THE TRIENNIAL ELECTION OF SCHOOL BOARDS.

At the Council Chamber, Whitehall, the 30th day of November 1878. By the Lords of the Committee of the Privy Council on Education in Scotland.

The Lords of the Committee of Privy Council of Education in Scotland, by virtue and in pursuance of the powers in them vested under the Education (Scotland) Acts, 1872 and 1878, and of every other power enabling them in this behalf, do order, and it is hereby ordered as follows—

With respect to the triennial election of a school board:

1. Every existing school board shall remain in office until a new election shall take place.

2. The number of members of a new school board shall be the number determined in the case of the first election; unless such number may have been changed by any order of the Scotch Education Department, which has been, *or may be*, communicated to the school board *one month* before the triennial election.

3. The election shall be held upon some convenient day to be fixed by the school board, provided that such day of election shall be not more than *ten* clear days before, or *twenty* clear days after, the same day of the year as that which was fixed for the first election of the school board.

4. The returning officer shall be the chairman of the school board, or failing him, some person appointed by the school board.

No candidate for election may act as returning officer.

5. The electors shall consist of all persons being of lawful age, and not subject to any legal incapacity, whose names are entered on the latest Valuation Roll applicable to the parish or burgh for which the board is to be elected, made up and completed not less than one month prior to the election, as owners or occupiers of lands or heritages of the annual value of not less than four pounds, situated within such parish or burgh.

6. *Eighteen* clear days at least before the day fixed for the election the returning officer shall prepare, sign, and publish, such notice of the election as is herein-after prescribed.

7. The notice shall specify the number of members to be elected, with the day fixed for the election; and shall also specify a place for the reception of the nomination papers herein-after mentioned.

The notice shall be in the form in Schedule A. annexed to this order, *or to the like effect.*

8. After publication of the notice, but not less than *fourteen* clear days before the day fixed for the election, any two electors may nominate as a candidate any person of full age, by sending to, or delivering at, the appointed place, a nomination paper, subscribed by such two electors as aforesaid, and stating the Christian name and surname, with the place of abode and designation, of each subscriber, and of the candidate nominated; and the returning officer shall send, forthwith, notice of such nomination to each candidate.

No teacher of a public or State-aided school is eligible as member of a school board, and no person holding an office of profit under a school board is eligible as a member of such school board.

9. No nomination paper shall be received after 4 P.M. of the last day upon which such paper may be received, except so far as herein-after ordered, and no person shall be a candidate unless he has been nominated within the time and in the manner aforesaid.

The returning officer shall decide whether any nomination is valid, and his decision shall be final.

10. *Eleven* clear days at least before the day fixed for the election the names, places of abode, and designations, of the several candidates nominated as aforesaid shall be published by the returning officer.

11. After delivery of a nomination paper, but not less than *eight* clear days before the day fixed for the election, any candidate may be withdrawn by the delivery at the place appointed of a notice of such withdrawal, addressed to the returning officer, and signed by the candidate.

Such notice shall be delivered not later than 4 P.M. of the last day on which it may be received, except so far as herein-after ordered.

12. If the number of candidates, nominated and not withdrawn as aforesaid, shall equal but not exceed the number of members to be elected, such candidates shall be deemed to be elected on the day fixed for the election, and the returning officer shall on that day publish a list of the names, with the places of abode and designations, of the persons so elected, and such publication shall be conclusive evidence of the election.

13. If the number of candidates nominated and not withdrawn as aforesaid shall be less than the number to be elected, but sufficient to constitute a quorum of the school board, the returning officer shall, on the day fixed for the election, declare such candidates to be duly elected, and shall publish a list of the names, with the places of abode and designations, of the persons so elected; and they shall, at their first meeting, nominate and appoint as many persons to be members of the school board as shall be necessary to make up the full number of members, and shall give notice of such appointment to the Scotch Education Department.

If the number of candidates so nominated, and not withdrawn, shall *not* be sufficient to constitute a quorum, the returning officer shall report to the Scotch Education Department that no election has taken place.

Three members constitute a quorum of a school board.

14. If after the time herein-before limited for the withdrawal of any candidate more persons remain as candidates than there are members to be elected, the returning officer shall *forthwith* publish the names, places of abode, and designations, of the several candidates, and give notice that a poll will be taken on the day fixed for the election, between the hours specified in such notice.

15. The school board shall determine the number and situation of the polling stations, and, for the purposes of the election, may cause their district to be divided into polling divisions. The returning officer shall cause the boundaries of such divisions, and the number and situation of the poll-

ing stations, to be published not less than *three* clear days before the day fixed for the election.

In burghs where the polling divisions correspond to the wards into which the burgh is divided, the boundaries of such polling divisions may be described by naming the ward to which each polling division corresponds.

No public house shall be used for a polling-station, or for the purposes of an election.

16. If the district of a school board is divided into polling divisions, each voter shall give his vote in the polling division in which the property in respect of which he is entitled to vote is situate, and if it is situate in more than one such division, he shall vote in any one, but in one only, of the divisions in which it is situate.

17. The returning officer, or some person or persons appointed by him for this purpose, shall preside at each polling-station, provided that only one person shall preside at the same time.

18. The poll shall be open—

(a.) *In a burgh*, during the hours prescribed for municipal elections.

(b.) *In a parish*, during not less than *six*, nor more than *eight*, hours, from such hour not later than 12 o'clock noon, to such hour not later than 6 P.M., as the school board may fix.

19. Subject to the provisions of this order, the poll shall be taken—

(a.) *In a burgh*, in like manner as a poll at a contested municipal election is directed by the Ballot Act, 1872, to be taken; and subject to this order the provisions of that Act shall apply to the election of a school board, with the substitution of the term "school board election" for the term "municipal election."

(b.) *In a parish* in the manner prescribed in the Schedule (B) annexed to this order.

20. In case of an equality of votes the returning officer shall determine the person to be elected.

21. The returning officer shall publish notice of the result of the poll, and of the names, with the places of abode and designations, of the persons elected.

22. The returning officer shall, in every case, transmit to the Scotch Education Department a copy of the list which he publishes, showing the result of the election.

23. The returning officer shall deliver the ballot papers in a sealed cover to the clerk of the school board, to be kept among the records of the board, subject to the direction of the Scotch Education Department.

24. Notice of the election of a person to be a member of a school board shall be sent to that person by the returning officer, together with a notice to attend the first meeting of the school board, at a place and time to be prescribed before the election by the school board, and that time shall not be later than fourteen clear days after the date of the election.

25. The expenses incident to the election (but not including the expenses of any candidate) shall be paid by the school board out of the school fund. Provided that if any question shall arise as to such expenses such question shall be referred to the Scotch Education Department, whose decision thereon shall be final and conclusive.

26. Notices and other matters required by these regulations to be published, shall be published—

(a.) *In a burgh*, by advertisement in the local newspapers, or in such other manner as public notices are usually published.

(b.) *In a parish*, by being affixed to the doors of the parish church, and of all other places of worship, and of all public or State-aided schools within the parish.

27. When the Scotch Education Department shall have decided that any burgh or town for which a school board has been elected shall cease to have a separate school board, and shall be included in the area of the parish in which it is situated, or where the said Department shall have decided that any parish for which a school board has been elected shall cease to be a parish for the purposes of the Education Acts, 1872 and 1878, and shall be esteemed to be a part of an adjoining burgh, then the returning officer shall be appointed, and the time and place and other arrangements for the election of the school board shall be fixed, at a joint meeting of the existing parish and burgh school boards.

28. Sundays are to be counted in reckoning the number of clear days specified in the various paragraphs of this order; but when the last day for receiving nominations or notices of withdrawal, so reckoned, falls on a Sunday, then no nominations or notices of withdrawal are to be received after 12 o'clock P.M. on the previous Saturday.

29. The regulations for an election in a parish shall apply to an election for any other school district not being a burgh.

30. The general order of the 31st day of January 1876, with respect to the triennial election of a school board, is hereby revoked.

F. R. SANDFORD, *Secretary.*

SCHEDULE A.

Form of Notice.

Triennial Election of a School Board.

School Board of_____

Notice is hereby given—that

1. The triennial election of a school board for this (*burgh, parish, or district*) will take place on the day of 18

2. The number of persons to be elected as members of the school board is_____

3. Every person of lawful age, and not subject to any legal incapacity, whose name is entered on the Valuation Roll, dated the day of 18 as owner or occupier of lands or heritages within the (*burgh, parish, or district*) of the annual value of not less than four pounds is entitled to vote in the election.

4. Any two electors may nominate any person of full age as a candidate, by sending to or delivering at (*some place to be specified*) a nomination paper.

The nomination paper must be dated and subscribed by the two electors, and must contain the Christian names, surnames, places of abode, and designations of the subscribers, and of the candidate nominated.

No nomination paper will be received after 4 P.M. [*or* 12 P.M., *as the case may be*] of the day of

5. Public notice will be given of the list of candidates on or before the day of

6. Any candidate may be withdrawn by the delivery at (*some place to be specified*), not later than 4 P.M. [*or* 12 P.M., *or as the case may be*] of the day of of a notice of withdrawal signed by the candidate and addressed to the returning officer.

7. The voting will take place in each polling division, and notice of the number and situation of the polling stations will be published on or before the day of .

Each voter must vote in the division in which the property in respect of which he is rated is situate, and if it is situate in more than one division, in any one, but only in one, of the divisions in which it is situate.

8. The poll will be open from A.M. till P.M.

9. The voting shall be by ballot.

10. Each voter has votes, all or some of which he may distribute among the candidates as he sees fit.

Dated this day of 18 .

Returning officer.

(*State office or address.*)

SCHEDULE B.

Rules and Directions for taking Votes in Parishes.

1. *Preparations for Poll.*—The returning officer shall provide a ballot box so constructed that a ballot paper can be introduced therein, but cannot be withdrawn without the box being unlocked; a sufficient number of printed ballot papers, containing the names of the candidates; materials for the marking of the votes on the ballot papers, sealing wax, and a copy of the Valuation Roll of the parish or school district: and shall cause one compartment or more to be fitted up in the polling place, in which the voter shall be screened from observation while marking his ballot paper. Provided that in any parish situated in the counties of Argyll, Inverness, Ross and Cromarty, and Orkney and Shetland, the returning officer may use written ballot papers.

The returning officer shall make a uniform private mark on all the ballot papers issued.

2. *Persons entitled to attend at the Polling Place.*—The only persons entitled to be present within the polling place are the returning officer and his clerks, and the candidates, or the persons (one each) whom they shall authorize in writing under their hand to represent them.

3. *Declaration of Secrecy.*—Before the opening of the poll, the returning officer and every person authorized to be present within the polling place, or at the counting of the votes, must have made before a justice of the peace the following declaration of secrecy:—

> I solemnly promise and declare that I will not communicate, except for some purpose authorized by law, any information as to the persons who have voted or not voted, or as to the candidates for whom any vote has been given at the election for a school board in this parish [or school district].

The returning officer shall not permit any person who has not made the above declaration of secrecy to attend within the polling place.

4. *Commencement of Poll.*—Before the commencement of the poll, the returning officer shall show the ballot box, empty, to such persons as may be present, and then lock it up and seal it. He shall then place it near him, and keep it within his view.

5. *Mode of Voting.*—When any person comes up to vote, the returning officer shall ascertain that the person is entitled to vote; and if so, the returning officer shall deliver to the voter a ballot paper, call out his name and description as stated in the Valuation Roll, and place against the name

of the voter a mark, which will denote that the voter has received a ballot paper, but not denote the particular ballot paper which he has received.

The voter, having received his ballot paper, shall proceed at once to the compartment, and shall there, either in figures or by crosses, but not in written words, secretly insert opposite the names of the candidates for whom he votes the number of votes he gives to each. He shall then fold up his ballot paper so as to conceal the figures or crosses which he has inserted, put the ballot paper, so folded, at once into the ballot box, and immediately leave the polling place.

6. *Order within the Polling Place.*—The returning officer shall make arrangements for preserving order within the polling place; and shall regulate the admission of electors, so that those voting shall not be liable to be overlooked or otherwise put to inconvenience; and shall see that each voter retires immediately after giving his vote.

7. *Validity of Votes.*—Any ballot paper on which more votes are given than the voter is entitled to give, or on which anything is written or marked by which the voter can be identified, shall be invalid and not counted.

8. *Proceedings at close of Poll.*—Immediately after the time fixed for the close of the poll, the returning officer, in presence of the candidates or the persons authorized to represent them, shall break the seal, open the box, examine the ballot papers, and record and sum up the votes for each candidate. He shall then make up the whole of the ballot papers into a packet, and shall write on the outside of the packet a description of its contents, the date of the election, and the name of the school board, and shall seal up and deliver the same to the clerk of the school board, to be kept among the records of the board, subject to the direction of the Scotch Education Department.

9. *Proceedings where there is more than one Polling Place.*—

(*a.*) If there be more than one polling place appointed for a parish or school district, the returning officer shall appoint for each polling place a presiding officer, who shall conduct the taking of the votes in all respects in conformity with the foregoing rules.

(*b.*) The returning officer shall deliver to the presiding officer, along with the other necessary materials for voting, a certified list taken from the Valuation Roll of the persons entitled to vote at each polling place.

(*c.*) At the close of the poll, in the presence of the candidates or the persons authorized to represent them, the presiding officer shall seal with his own seal, and the seals of such candidates as desire to affix their seals, the ballot box in use at his polling place unopened, but with the key attached, and shall deliver the box as soon as practicable to the returning officer.

(*d.*) The returning officer shall make arrangements for counting the votes in the several ballot boxes in the presence of the candidates, or the persons authorized to represent them, as soon as practicable after the close of the poll, and shall give to the candidates notice of the time and place at which he will begin to count the same.

(*e.*) Before beginning to count the votes, the returning officer shall, in the presence of the candidates, or the persons authorized to represent them, open the ballot boxes, and then mix together the whole of the ballot papers contained in the ballot boxes.

(*n.*) CIRCULAR No. 22.—ELECTION EXPENSES.

SCOTCH EDUCATION DEPARTMENT,
22d December 1878.

SIR,—

1. Your board are doubtless aware that under the Schedule to the Education (Scotland) Act, 1878, their Lordships are empowered to make regulations as to the duties, remuneration, and expenses of any officers required in the elections of school boards.

2. In connection with the forthcoming elections, certain duties fall to be discharged by the returning officers, under their Lordships' General Order of 30th November 1878. My Lords on the occasion of the last election had addressed to them several inquiries relating to points of law arising in connection with the duties of returning officers. Where such questions appeared to their Lordships to belong to the interpretation of the Act, they refrained from expressing an opinion thereon, and referred the correspondents to legal advice.

3. But the question may further arise, how far expenses incurred in procuring such advice can be reckoned to be "expenses incident to the election" under paragraph 25 of the General Order. In order to prevent an undue and unnecessary burden being laid on the ratepayers, their Lordships must hold the returning officer personally responsible for all such expenses; and it will therefore be advisable, in case he should find himself in doubt as to any legal question, that he should obtain the sanction of the existing school board, before incurring expense in procuring counsel's opinion thereon. Should such sanction not have been previously obtained, their Lordships will disallow the expenditure, unless it is proved to their satisfaction that the doubt felt by the returning officer was reasonable, and that no course was open to him other than to take legal advice.

4. It will be advisable also that the returning officer should, for the purposes of the election, avail himself, so far as may be possible, of any premises (other than school premises) at the disposal of the school board, and of the services of the school board officials.

5. Their Lordships trust that every effort will be used to keep down the expenses of elections; and it must be understood that they will disallow any expense incurred through a failure on the part of the returning officer to avail himself of the machinery at the disposal of the board, or any charge on a higher scale than is warranted by this letter, unless the previous sanction of the Scotch Education Department has been obtained.

6. The attention of returning officers should be directed to the following specific points.

(1.) Notices required by the General Order regulating the election need not, *in the case of a parish*, be published in any newspaper, and any expense incurred in doing so in such a case will be disallowed, unless previously sanctioned by the Scotch Education Department.

(2.) In making out a bill of charges the returning officer must set forth, *first*, the sum total charged as his fee for personal trouble, and *secondly*, the various items charged in respect of sums actually disbursed, or to be disbursed, by him.

(3.) *As to the first.*—If the election is uncontested, the fee *must not exceed* £3, 3s. 0d.

(4.) If the election be contested, and there is only one polling station, the fee must *not exceed* £6, 6s. 0d., and my Lords consider that if there is more than one polling station, the maximum sum to be charged should not *exceed*

£3, 3s. 0d. for each polling station *after the first;* nor should the charge in any case exceed the sum of £30, unless the sanction of the Scotch Education Department has been previously obtained.

(5.) *As to the second.*—The number of polling *stations* should not exceed one for every 1000 persons entitled to vote, as shown by the Valuation Roll, unless the previous sanction of the Scotch Education Department has been obtained.

(6.) There must be only one presiding officer at a fee not exceeding £3, 3s. 0d. for each polling station, and not more than two clerks, whose fee should not exceed £1, 10s. if one only is employed, or £2 together, if two are employed. One of the clerks may also be appointed as a deputy to act for the presiding officer in case of emergency. No money for refreshments may be paid to the returning or presiding officer or to any of the persons employed, nor should any refreshments be provided out of the rates.

(7.) The counting of the votes need not take place on the evening of the poll if it cannot be completed before 9 o'clock.

(8.) If the counting cannot be completed the same evening, a sum not exceeding £1 may be allowed to any presiding officer employed on the following day, and 15s. to each of the clerks.

The above regulations [6 (1) *to* (8)] *will apply to all burghs and parishes in which the population, at the census of* 1871, *did not amount to* 20,000. *In the case of burghs and parishes in which the population, at that census, amounted to* 20,000 *or more, the same regulations shall be in force, unless the sanction of the Scotch Education Department is given to any modification, and such sanction will be given only on a joint application to the Scotch Education Department by the school board and the returning officer.*

9. If the Valuation Roll requires to be *copied* and *arranged alphabetically*, the returning officer will be allowed to charge a sum under this head which must not, in ordinary cases, exceed the rate of one halfpenny for each name. My Lords are aware that this may not be sufficient in the case of large towns where the work is one requiring much time and attention; but in no case will a charge at a higher rate be sustained, unless the previous sanction of the Scotch Education Department has been obtained, and before such sanction is given the special circumstances of the case must be shown to warrant the higher payment. This charge must cover all expenses incurred in advertising and attending at the inspection of the roll and certifying as to omissions, &c., discovered after the copy has been made.

10. Unless the leave of the Scotch Education Department has been *specially obtained*, no expenses for making an alphabetical list of the Valuation Roll will be allowed in any case in which there has been no poll. It is considered that the eight clear days specified in the order for election, as the *minimum* time that must intervene between the withdrawal of candidates and the election, give sufficient time to enable the returning officer to prepare such list. If in any case, however, this is thought insufficient, a longer time may be allowed by the notice of the election.

11. With respect to ballot boxes and other fittings, my Lords think that in burghs those provided for municipal elections should be used for the school board elections, free of charge.

12. If ballot boxes and fittings have been provided for a school board election in a burgh or parish, an arrangement should if possible be made by which the same ballot boxes and fittings may be used in a school board election in any neighbouring burgh or parish.

13. The ballot boxes and other fittings of course belong to the school board of the parish which paid for them, but each parish which uses them would no doubt be willing to pay a certain sum for the privilege.

14. In order that all questions relating to election expenses may be settled as soon as possible, I am to request that the accounts of such expenses be submitted for audit, apart from the other expenses of the board, to Mr Alexander Bain, Accountant's Office, 33 York Place, Edinburgh, *within three months* after the date of the election.—I have the honour to be, Sir, your obedient Servant,

F. R. SANDFORD, *Secretary.*

To the Clerk to the School Board

*of*_____

(*o.*) CIRCULAR No. 34. HIGHER CLASS PUBLIC SCHOOLS AND *RELATIVE FORM.*

SCOTCH EDUCATION DEPARTMENT,
28th December 1878.

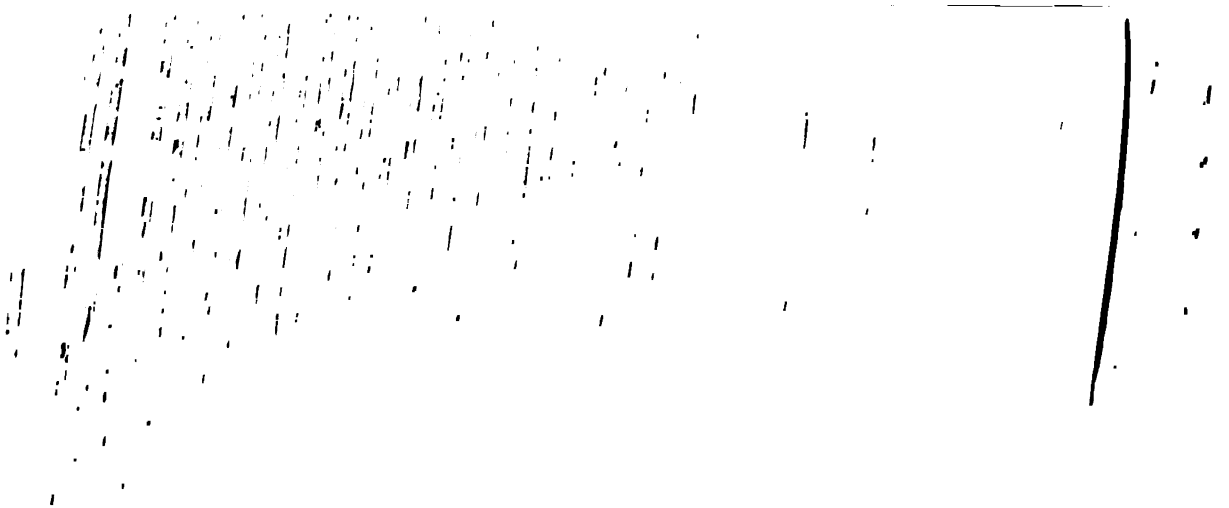
SIR,

MY Lords have had under consideration the position of the higher class public schools as affected by the Education (Scotland) Act, 1878, first in respect of the expenditure which may be incurred on these schools out of the school fund, and, secondly, in respect of the examination of these schools by this Department.

For the sake of future reference my Lords would be glad to have returns with regard to the income and expenditure of these schools, as well as the subjects of instruction, and the numbers in attendance. These may be furnished on the enclosed form, which should be returned to me on or before the 1st of February 1879.

1. With regard to expenditure out of the school fund under section 18 of the Education (Scotland) Act, 1878, I am to impress upon your Board the fact that the discretionary sanction reserved to their Lordships under that section does not relieve the Board from the responsibility of deciding in regard to the district under their jurisdiction, whether any, and if so, what amount of, expenditure may be called for by local circumstances. Their Lordships fully sympathise with the strong and very general desire of improving the standard of higher education, and of maintaining, so far as this can be done consistently with the main object of the Legislature in providing elementary education for the mass of the population, what has long been a valued characteristic of the Scotch national system of schools, the power of giving to children of all classes likely to profit by it the opportunity of higher instruction. But it is for your Board to consider, with the guidance of its own local knowledge, how far it feels justified in putting into operation the permissive clauses of the Act of 1878. Their Lordships must confine themselves to sanctioning certain kinds of expenditure which appear to come generally within the terms of the Act, and must leave it to your Board to consider, before making application for such sanction, how far a burden of this kind ought to any extent to be laid upon the rates. In considering this question the School Board will not lose sight of the possible assistance to higher education that may result from such schemes as may be submitted to the Endowed School Commissioners.

The following items may be generally considered as admissible:—Rates and taxes, necessary repairs to buildings, the provision of such scientific apparatus as may be required for efficient instruction, and the expenses of advertising to a moderate extent. There are other items, such as the



Estimated average attendance during the year.	Male.	Female.	Total.

Subjects taught.	Fees.	Number receiving instruction in each.					
		During school year ended as above.			At Present.		
		Male.	Female.	Total.	Male.	Female.	Total.

INCOME—

	£	s.	d.
1. Fees during school year ended as above?			
2. Common Good?			
3. General Endowments? (Name Fund from which derived.)			
4. Special Endowments?			
5. School Fund?			
6. Other Sources? (Specify.)			
Total			

EXPENDITURE—

1. Salaries of Teachers.	Name.	Qualification.	Salary (inclusive of fees).		
			£	s.	d.
		Total			

8. After publication of the notice, but not less than *fourteen* clear days before the day fixed for the election, any two electors may nominate as a candidate any person of full age, by sending to, or delivering at, the appointed place, a nomination paper, subscribed by such two electors as aforesaid, and stating the Christian name and surname, with the place of abode and designation, of each subscriber, and of the candidate nominated; and the returning officer shall send, forthwith, notice of such nomination to each candidate.

No teacher of a public or State-aided school is eligible as member of a school board, and no person holding an office of profit under a school board is eligible as a member of such school board.

9. No nomination paper shall be received after 4 P.M. of the last day upon which such paper may be received, except so far as herein-after ordered, and no person shall be a candidate unless he has been nominated within the time and in the manner aforesaid.

The returning officer shall decide whether any nomination is valid, and his decision shall be final.

10. *Eleven* clear days at least before the day fixed for the election the names, places of abode, and designations, of the several candidates nominated as aforesaid shall be published by the returning officer.

11. After delivery of a nomination paper, but not less than *eight* clear days before the day fixed for the election, any candidate may be withdrawn by the delivery at the place appointed of a notice of such withdrawal, addressed to the returning officer, and signed by the candidate.

Such notice shall be delivered not later than 4 P.M. of the last day on which it may be received, except so far as herein-after ordered.

12. If the number of candidates, nominated and not withdrawn as aforesaid, shall equal but not exceed the number of members to be elected, such candidates shall be deemed to be elected on the day fixed for the election, and the returning officer shall on that day publish a list of the names, with the places of abode and designations, of the persons so elected, and such publication shall be conclusive evidence of the election.

13. If the number of candidates nominated and not withdrawn as aforesaid shall be less than the number to be elected, but sufficient to constitute a quorum of the school board, the returning officer shall, on the day fixed for the election, declare such candidates to be duly elected, and shall publish a list of the names, with the places of abode and designations, of the persons so elected; and they shall, at their first meeting, nominate and appoint as many persons to be members of the school board as shall be necessary to make up the full number of members, and shall give notice of such appointment to the Scotch Education Department.

If the number of candidates so nominated, and not withdrawn, shall *not* be sufficient to constitute a quorum, the returning officer shall report to the Scotch Education Department that no election has taken place.

Three members constitute a quorum of a school board.

14. If after the time herein-before limited for the withdrawal of any candidate more persons remain as candidates than there are members to be elected, the returning officer shall *forthwith* publish the names, places of abode, and designations, of the several candidates, and give notice that a poll will be taken on the day fixed for the election, between the hours specified in such notice.

15. The school board shall determine the number and situation of the polling stations, and, for the purposes of the election, may cause their district to be divided into polling divisions. The returning officer shall cause the boundaries of such divisions, and the number and situation of the poll-

ing stations, to be published not less than *three* clear days before the day fixed for the election.

In burghs where the polling divisions correspond to the wards into which the burgh is divided, the boundaries of such polling divisions may be described by naming the ward to which each polling division corresponds.

No public house shall be used for a polling-station, or for the purposes of an election.

16. If the district of a school board is divided into polling divisions, each voter shall give his vote in the polling division in which the property in respect of which he is entitled to vote is situate, and if it is situate in more than one such division, he shall vote in any one, but in one only, of the divisions in which it is situate.

17. The returning officer, or some person or persons appointed by him for this purpose, shall preside at each polling-station, provided that only one person shall preside at the same time.

18. The poll shall be open—

(a.) *In a burgh*, during the hours prescribed for municipal elections.

(b.) *In a parish*, during not less than *six*, nor more than *eight*, hours, from such hour not later than 12 o'clock noon, to such hour not later than 6 P.M., as the school board may fix.

19. Subject to the provisions of this order, the poll shall be taken—

(a.) *In a burgh*, in like manner as a poll at a contested municipal election is directed by the Ballot Act, 1872, to be taken; and subject to this order the provisions of that Act shall apply to the election of a school board, with the substitution of the term "school board election" for the term "municipal election."

(b.) *In a parish* in the manner prescribed in the Schedule (B) annexed to this order.

20. In case of an equality of votes the returning officer shall determine the person to be elected.

21. The returning officer shall publish notice of the result of the poll, and of the names, with the places of abode and designations, of the persons elected.

22. The returning officer shall, in every case, transmit to the Scotch Education Department a copy of the list which he publishes, showing the result of the election.

23. The returning officer shall deliver the ballot papers in a sealed cover to the clerk of the school board, to be kept among the records of the board, subject to the direction of the Scotch Education Department.

24. Notice of the election of a person to be a member of a school board shall be sent to that person by the returning officer, together with a notice to attend the first meeting of the school board, at a place and time to be prescribed before the election by the school board, and that time shall not be later than fourteen clear days after the date of the election.

25. The expenses incident to the election (but not including the expenses of any candidate) shall be paid by the school board out of the school fund. Provided that if any question shall arise as to such expenses such question shall be referred to the Scotch Education Department, whose decision thereon shall be final and conclusive.

26. Notices and other matters required by these regulations to be published, shall be published—

(a.) *In a burgh*, by advertisement in the local newspapers, or in such other manner as public notices are usually published.

(b.) *In a parish*, by being affixed to the doors of the parish church, and of all other places of worship, and of all public or State-aided schools within the parish.

XII.

FORMS OF COMPLAINT,[1] &c.

FORM OF SUMMONS TO APPEAR BEFORE THE SCHOOL BOARD OF

Under the Education (Scotland) Act, 1872 (35 and 36 Vict. cap. 62), Sect. 70.

[*Name, occupation, and residence of defaulting parent, guardian, or other person liable to maintain, or having the actual custody of the child or children*] Take notice that the school board of have ascertained that you have failed and omitted, and are failing and omitting, to perform the duty of providing elementary education in reading, writing, and arithmetic for your child [*names and ages of children for whom education has not been provided*] as required by "The Education (Scotland) Act, 1872," Sect. 69; wherefore the said school board hereby summon you to appear before the school board, at their meeting, within the [*place of meeting*] at o'clock , on the day of 18 , to give to the school board every information and explanation which may be required respecting your failure of duty with respect to the education of your said child .

Under certification that if you do not appear, or on appearance do not satisfy the school board that you have not failed in your said duty without reasonable excuse for such failure, and shall not undertake, to the satisfaction of the school board, to perform such duty by forthwith providing such elementary education as aforesaid for your said child , the school board will proceed further against you in terms of the Statute.—By order of the School Board of .

_____ *Chairman of the School Board.*

_____ *Clerk of the School Board.*

[*Place and date.*]

FORM OF CERTIFICATE FOR TRANSMISSION TO PROCURATOR-FISCAL OR OTHER PERSON APPOINTED BY SCHOOL BOARD, FOR PROSECUTION OF DEFAULTING PARENTS.

WHEREAS, in terms of the 70th section of "The Education (Scotland) Act, 1872" [*name, occupation, and residence of defaulting parent, guardian, or other person liable to maintain, or having the actual custody of, the child or children*] was duly summoned to appear before the school board of at a meeting thereof held on the day of 18 , in order to explain why [*he or she*] has failed to provide elementary education, in reading, writing, and arithmetic, for [*here state names and ages of children not at school, adding "his" or "her" child or children, or otherwise as the case may be*] and residing with ; and whereas the said [*name of defaulting parent, &c., adding "failed to appear at said meeting and," or*

[1] These forms are intended by way of suggestion and help to those administering the Act, but they do not supersede the necessity of carefully considering each individual case.

"*having appeared at said meeting failed*"] to satisfy the board that [*he or she*] had any reasonable excuse for such failure, and has not undertaken to the satisfaction of the board to perform such duty by forthwith providing such elementary education for said child [*or children*]. Therefore the said school board do hereby, in terms of 70th Section of the said "Education (Scotland) Act, 1872," and 28th Section of the "Education (Scotland) Act, 1878," certify that the said [*name of defaulting parent, &c.*] has been for a period of at least one month prior to this date, and is now grossly, and without reasonable excuse, failing to discharge the duty of providing elementary education, as required by Section 69 of the said "Education (Scotland) Act, 1872," for the said [*name of child or children*], and direct their clerk to transmit this certificate to the procurator fiscal of the county of , [*or name of other person appointed by school board to prosecute.*]

Signed in name and by authority of the Board, this day of 18 , by

_____ *Chairman of School Board of* .

FORM OF COMPLAINT UNDER ACTS OF 1872 AND OF 1878.

Parent failing to provide Education.

Under the Summary Procedure Act, 1864.

Unto the Honourable the Sheriff of the County of [*or Her Majesty's Justices of the Peace for the County of*].

The complaint of A B, procurator fiscal of court [*or other person appointed by the school board to prosecute, and to whom a certificate in terms of Sect. 70 of the principal Act has been transmitted.*]

HUMBLY SHEWETH,

That C D [*name and designation of the defaulting parent, guardian, or other person liable to maintain or having the actual custody of the child or children*] has been guilty of an offence against Sections 69 and 70 of the "Education (Scotland) Act, 1872," and Section 28 of the "Education (Scotland) Act, 1878:" In so far as the said C D has been for a period of [*state period of default, being not less than one month*] immediately preceding the date hereof, and is[1] now grossly and without reasonable excuse failing to discharge the duty of providing, as required by Section 69 of the said "Education (Scotland) Act, 1872," elementary education in reading, writing, and arithmetic for [*names and ages of children for whom education has not been provided*] and residing with [*him or her, or otherwise*] whereby the said C D is, in terms of section 70 of the said "Education (Scotland) Act, 1872," liable to a penalty not exceeding twenty shillings, or to imprisonment not exceeding fourteen days.

May it therefore please your Lordship to grant warrant to cite the said C D to appear before you to answer to this complaint, and thereafter to convict [*him or her*] of the said contravention, and to adjudge [*him or her*] to suffer the penalty or imprisonment provided by the said Education (Scotland) Act, 1872, and to find [*him or her*] liable in expenses.

According to Justice.

[1] In several cases at Falkirk, Sheriff Bell refused to convict because the children had been attending school since the date of the certificate.

FORMS OF CONVICTION ON FOREGOING COMPLAINT.

A.—Where Penalty Awarded.

At , the day of eighteen hundred and years.—The Sheriff [*or the Justices*] in respect of the [*judicial confession of the said C D or of the evidence adduced*] convicts the said C D of the offence charged, and therefore adjudges [*him or her*] to forfeit and pay the sum of shillings of penalty [*or modified penalty*], and also finds [*him or her*] liable in shillings of expenses to the complainer, and ordains instant execution by arrestment, and also execution by poinding and imprisonment; Grants warrants to officers of court to arrest all debts and sums of money owing to the said C D, and in default of payment within days from this date to poind goods and effects and to sell the same at the expiration of not less than forty-eight hours after such poinding without further notice or warrant, and appoint a return or execution of such poinding or sale to be made within days from the expiration of the period hereby allowed for payment under certification of imprisonment in default of payment or recovery of the said sums with the expenses of diligence before the time allowed for such report.

B.—Where Imprisonment Awarded.

At , the day of eighteen hundred and years.—The Sheriff [*or the Justices*] in respect of the [*judicial confession of the said C D or of the evidence adduced*] convicts the said C D of the offence charged [*or state to what extent he is guilty*], and therefore adjudges [*him or her*] to be imprisoned in the prison of , for the period of days from this date [*or from the date of his imprisonment*]: And grants warrant to officers of court to apprehend C D and convey [*him or her*] to the said prison and to the keeper thereof to receive and detain [*him or her*] accordingly;[2] And finds the said C D liable in [*a sum not exceeding twenty shillings*] of expenses to the complainer, and adjudge him to be imprisoned[1] in the said prison for the further period of days from the expiration of the last-mentioned period unless the said sum shall be sooner paid.

[*The conviction must be signed by two Justices.*]

FORMS OF COMPLAINT UNDER THE ACT OF 1878.

First Case.

Employment of child under ten.

Under the Summary Procedure Act, 1864.

Unto the Honourable the Sheriff of [*or Her Majesty's Justices of the Peace for*] the County of

[1] In practice it is understood that imprisonment is not inserted in this part of the conviction. The forms given follow literally the schedules of the Summary Procedure Act, K., Nos. 2 and 6.

[2] This is unnecessary, and may be dispensed with where the accused is present —Kinnear *v.* Whyte, I. Couper, 56.

The complaint of A B, procurator fiscal of court [*or other person appointed by the school board to prosecute in terms of sect. 23 of the Act of* 1878], or [*where the employment is in a factory, workshop, or mine*] the Inspector or Sub-Inspector, under "The Factory and Workshops Act, 1878," or "The Mines Regulation Act, 1872."

HUMBLY SHEWETH,

That C D [*name, address, and trade of employer*] has contravened the fifth section of "The Education (Scotland) Act, 1878:" In so far as on the day of the said C D took into his employment [*state generally the kind of employment and the place where carried on*], F G [*name and sex of child*], the child of [*name and designation of parent*], or living with [*name and designation of guardian or other person having custody of child*], being a child under the age of nine [*if the prosecution be brought before 1st October* 1879, *otherwise*; ten] years: [*add, if this be the fact*] and has since kept the said F G in the said employment, whereby the said C D is liable in terms of the eighth section of the said Act to a penalty not exceeding forty shillings.

May it therefore please your Lordship [*or your Honours*] to grant warrant to cite the said C D to appear before you to answer to this complaint and thereafter[1] to convict [*him or her*] of the said contravention, and to adjudge [*him or her*] to suffer the penalty provided by the said "Education (Scotland) Act, 1878," and to find [*him or her*] liable in expenses.

According to justice.

FORM OF CONVICTION FOR ALL CASES UNDER THE ACT OF 1878.

Same as Form A under the Act of 1872.

SECOND CASE.

Employment of child above ten.

The Title same as in First Case.

HUMBLY SHEWETH,

That C D [*name, address, and trade of employer*] has contravened the fifth section of "The Education (Scotland) Act, 1878": In so far as on the day of the said C D took into his employment [*state generally the kind of employment and the place where carried on*], F G [*name and sex of child*], the child of [*name and designation of parent*], or living with [*name and designation of guardian or other person having custody of child*] the said F G being a child of the age of nine [*if the complaint be brought before 1st October* 1879; *otherwise*, ten] years, and under the age of fourteen years who has not obtained a certificate of ability to read and write, and of a knowledge of elementary arithmetic, in terms of section seventy-three of "The Education (Scotland) Act, 1872," and who is not employed, and is not attending school in accordance with the provisions of any Act of Parliament regulating the education of children employed in labour, or of any minute of the Scotch Education Department fixing the standard of educa-

[1] As the complaint here "concludes for a pecuniary penalty only in the first instance," it would appear from section seven of "The Summary Procedure Act, 1864," that in the absence of the respondent the Court may, without issuing warrant for apprehension or adjourning the case, proceed to hear and dispose of the complaint. This provision would apparently *not* apply to the alternative prayer of a complaint under the Act of 1872.

tion required for the partial exemption of children from the obligation to attend school: [*add, if this be the fact*] and has since kept the said F G in the said employment; whereby the said C D is liable in terms of the eighth section of the said Act to a penalty not exceeding forty shillings.

[*Form of Prayer same as in First Case.*]

THIRD CASE.

Parent employing child under ten.

[*Title same as in First Case, except that the Inspector or Sub-Inspector under Factories or Mines Acts will in no case appear as complainer.*]

HUMBLY SHEWETH,

That C D [*name, address, and trade of parent, guardian, or of the person having custody of child*] has contravened the fifth and ninth sections of "The Education (Scotland) Act, 1878:" In so far as the said C D did upon the day of employ [*or permit to be employed*] in labour exercised by way of trade and for the purposes of gain [*state generally the kind of employment and the place where carried on*], F G [*name of child*] being the child of [*or living with*] the said C D, and being under the age of [nine, *if the complaint be brought before 1st October* 1879, *otherwise*, ten] years: [*add, if this be the fact*] and has since kept the said F G in the said employment; whereby the said C D is liable in terms of the eighth section of the said Act to a penalty not exceeding forty shillings.

[*Prayer same as in First Case.*]

FOURTH CASE.

Parent employing child above ten.

[*Title same as in First Case, except that the Inspector or Sub-Inspector under Factories or Mines Acts will in no case appear as complainer.*]

HUMBLY SHEWETH,

That C D [*name, address, and trade of parent, guardian, or other person having the custody of the child*] has contravened the fifth and ninth sections of "The Education (Scotland) Act, 1878": In so far as the said C D did, upon the day of , employ [*or permit to be employed*] in labour exercised by way of trade, or for the purposes of gain [*state generally the kind of employment and place where carried on*], F G [*name of child*] being the child of [*or living with*] the said C D, and being a child above the age of nine [*if the prosecution be brought before 1st October* 1879; *otherwise*, ten] years, and under the age of fourteen years, who has not obtained a certificate of ability to read and write, and of a knowledge of elementary arithmetic, in terms of "The Education (Scotland) Act, 1872," and that such child is not employed, and is not attending school in accordance with the provisions of any Act of Parliament regulating the education of children employed in labour, or of any minute of the Scotch Education Department fixing the standard of education to be required for the partial exemption of children from the obligation to attend school: [*add, if this be the fact*] and has since kept the said F G in the said employment; whereby the said C D is liable in terms of the eighth section of said "Education (Scotland) Act, 1878," to a penalty not exceeding forty shillings.

[*Prayer same as in First Case.*]

Fifth Case.

Casual employment of child under ten.

[*Title same as in First Case, except that the Inspector or Sub-Inspector under the Factories or Mines Acts will in no case appear as complainer.*]

Humbly Sheweth,

That C D [*name, address, and trade of employer*] has contravened the sixth section of "The Education (Scotland) Act, 1878": In so far as the said C D did upon the day of give casual employment [*state the kind of employment, whether vending articles or otherwise, not being employment regulated by Act of Parliament, and the street or other place outside child's home where employment is carried on*] to F G [*name of child, and add, where possible, name and designation of parent, guardian, or other person having the custody of the child*] being a child under the age of nine [*if the complaint be brought before 1st October* 1879; *otherwise*, ten] years: [*add, where this is the fact*] and the said C D has since kept the said F G in the said casual employment: whereby the said C D is liable in terms of the eighth section of the said Act to a penalty not exceeding forty shillings.

[*Prayer same as in First Case.*]

Sixth Case.

Casual employment of child above ten.

[*Title same as in First Case, except that the Inspector or Sub-Inspector under the Factories or Mines Acts will in no case appear as complainer.*]

Humbly Sheweth,

That C D [*name, address, and trade of employer*] has contravened the sixth section of "The Education (Scotland) Act, 1878": In so far as the said C D did [*after nine p.m. if between 1st April and 1st October; seven p.m. if between 1st October and 1st April*] upon the day of give casual employment [*state the kind of employment, whether vending articles or otherwise, not being employment regulated by Act of Parliament, and the street or other place outside child's home where employment is carried on*] to F G [*name of child, and if possible name and designation of parent, guardian, or other custodier*] the said F G being a child above the age of nine [*if the prosecution be brought before 1st October* 1879; *otherwise*, ten] years, and under the age of fourteen years, who has not obtained a certificate of ability to read and write, and of a knowledge of elementary arithmetic, in terms of section seventy-three of "The Education (Scotland) Act, 1872": [*add, where this is the fact*] and the said C D has since kept the said F G in the said casual employment; whereby the said C D is, in terms of the eighth section of said "Education (Scotland) Act, 1878," liable to a penalty not exceeding forty shillings.

[*Prayer same as in First Case.*]

Seventh Case.

Parent giving casual employment to child under ten.

[*Title same as in First Case, except that the Inspector or Sub-Inspector under the Factories or Mines Acts will in no case appear as complainer.*]

Humbly Sheweth,

That C D [*name, address, and trade of parent, guardian, or other person having the custody of the child*] has contravened the sixth and ninth sections of "The Education (Scotland) Act, 1878": In so far as the said C D did on the day of give casual employment in labour exercised by way of trade or for the purposes of gain [*state the kind of employment, whether vending articles or otherwise, not being employment regulated by Act of Parliament, and the street or other place outside*[1] *the child's home where the employment is carried on*] to F G [*name of child*] being the child of [*or living with*] the said C D, and being a child under the age of nine [*if the prosecution be brought before 1st October* 1879; *otherwise*, ten] years: [*or did permit the said F G to be so employed on his or her own behalf*] [*add, where this is the case*] and has since kept the said F G [*or permitted the said F G to remain*] in the said employment; whereby the said C D is, in terms of the eighth section of the said Act, liable to a penalty not exceeding forty shillings.

[*Prayer same as in First Case.*]

Eighth Case

Parent giving casual employment to child above ten.

[*Title same as First Case, except that the Inspector or Sub-Inspector under the Factories or Mines Acts will in no case appear as complainer.*]

Humbly Sheweth,

That C D [*name, address, and trade of parent, guardian, or other person having custody of the child*] has contravened the sixth and ninth sections of "The Education (Scotland) Act, 1878": In so far as the said C D did after [*nine p.m. if between 1st April and 1st October; seven p.m. if between 1st October and 1st April*] on the day of give casual employment in labour exercised by way of trade or for the purposes of gain [*state the kind of employment, whether vending articles or otherwise, not being employment regulated by Act of Parliament, and the street or other place outside*[1] *child's home where employment is carried on*] to F G [*name of child*] being the child of [*or living with*] the said C D, and being a child above the age of nine [*if the complaint be brought before the 1st October* 1879; *otherwise*, ten] years, and under the age of fourteen years, who has not obtained a certificate of ability to read and write, and of a knowledge of elementary arithmetic, in terms of section seventy-three of "The Education (Scotland) Act, 1872" [*or did permit the said F G to be so employed on his or her own behalf*]: [*add, where this is the case*] and has since kept the said F G [*or permitted the said F G to remain*] in the said employment; whereby the said C D is liable, in terms of the eighth section of said Education (Scotland) Act, 1878, to a penalty not exceeding forty shillings.

[*Prayer same as in First Case.*]

[1] This seems to be the result of Sections 6 and 9 of Act of 1878.

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[1] The reference is in every case to the paging, which is consecutive throughout.

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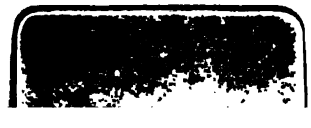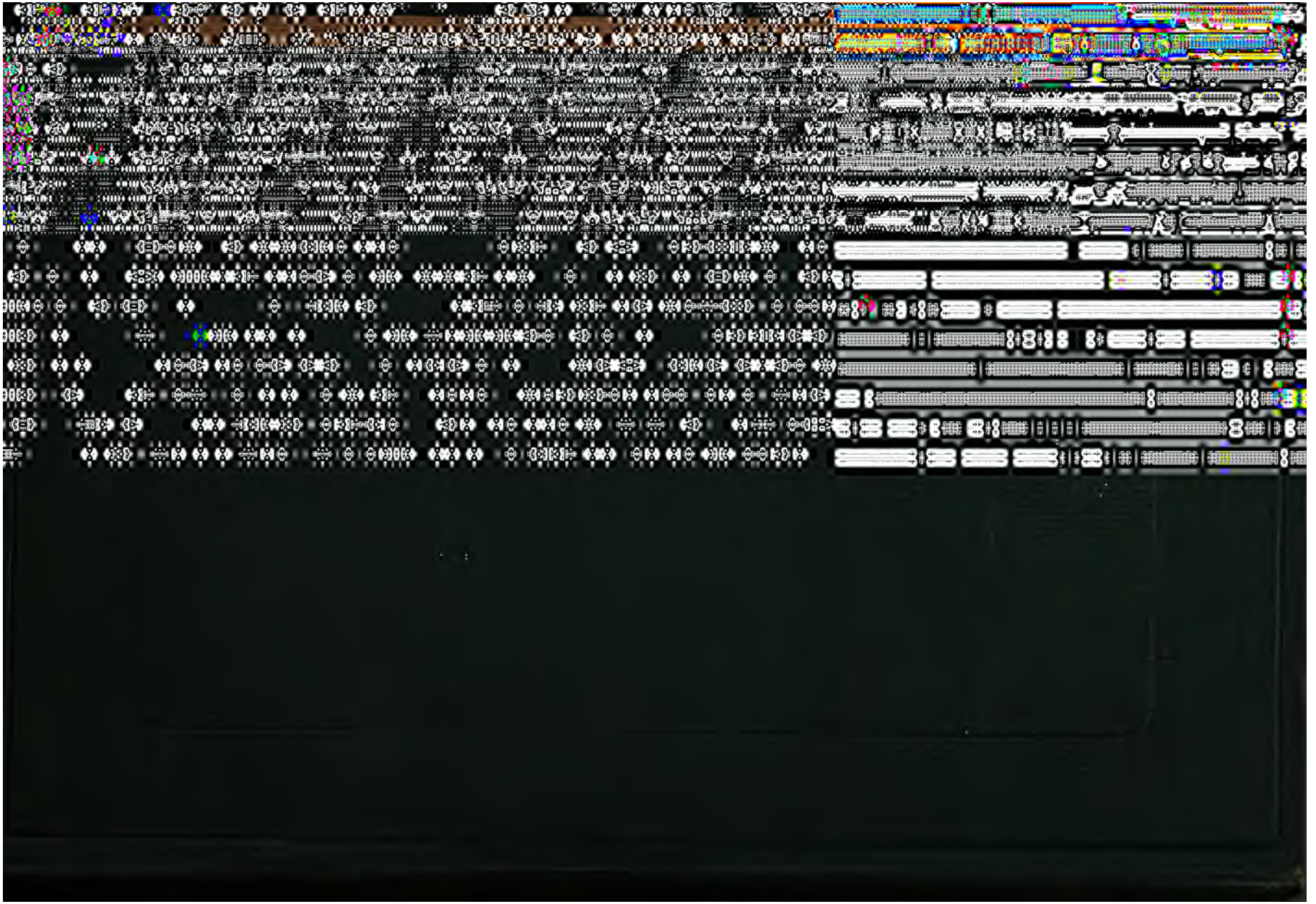
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